ISLAM, SEXUAL RIGHT, AND REPRODUCTIVE HEALTH

THE PERSPECTIVE OF JAVANESE ULAMA'

M. Ikhsanudin, S.Ag., M.S.I.

المَعْهَدالإسلَامِي المُنَوِّر كَرَابْيَاكْ جُوغْجَاكَرْتَا

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M. Ikhsanudin, S.Ag., M.S.I.

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Instagram: @bintangsemestamedia
Website: www.bintangpustaka.com
E-mail: bintangsemestamedia@gmail.com
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PREFACE

Thanks unto Almighty God, because of His gift and blessing the writer is able to write this book. In writing this book, the writer needs a long process and unsteady steps. Even, there is lacking on many parts of the writing of the book. However, it is my effort which is based on the dialectical process which needs a definitely long process and needs an extra energy.

This book started from socio-actual phenomena about the problem of sexuality which still become a controversial issue and recognized as taboo to be spoken in the Moslem public discourse, especially in Pondok Pesantren environment. The debate about sexual health and sexual right to be independent concept and equal with the concept of reproduction still become controversy both in national or international forum. In ICDP where hold in Egypt, Industrial country strives to include the concept of sexuality become independent, but many development countries refused it. Issue of sexuality becomes controversy especially from the perspective of religious scholar, including Kyai-Nyai within pesantren. Kyai-Nyai are cultural broker, religious elite and become references of community in many problems which faced by community, especially in Java island. So. It's very urgent to make research about the contemporary issue including the issue of sexuality from the perspective of Kyai-Nyai within Pesantren.

This book intends to study Ulama' Pesantren Java response and their dynamic thought about sexuality. The meaning of sexuality

matters in this research cover circumcision, sexual orientation (heterosexual, homosexual, lesbianism, etc.), sexual violence (marital rape, rape, incest, dating rape), sexually transmitted disease and HIV-AIDS and others which will be studied from ulama's (kyai-nyai) view perspective; it is called "fatwa's ulama". Fatwa is formal advice from an authority dealing with law matters and religious dogma. Position of fatwa is very crucial in Islam because it's one of four Islamic thought products besides fiqh books, court decision and legislation regulation

The perspective of Kyai-Nyai about the sexuality and health reproduction, in some issue there is significance progress that some of Kyai-Nyai views equal position between men and women related with the discourse of sexuality, such right for enjoying sexual, refusing sex for wife, sexual violence, contractual marriage and also family planning. But in the other sides, some of Kyai-Nyai still conservative and textual minded, and there is who dare to contextualize and change the law based on intra-doctriner-reform. The issue where they have different opinion, like, abortion, early marriage, circumcision, polygamy and the right for teenager to have a right information about sexuality. Some Kyai-and Nyai who dare to have understanding beyond textual basis they are engage with the discourse of gender, health reproduction and other contemporary issue from training, reading book etc and they received a empirical data so they can formulate law not only from the textual basis but also seeing empirical fact behind one phenomena, and it's appropriate with the formula *al-hukmu yaduru ma'a illatihi wujudan wa 'adaman* (the law is depend on the ratio legist, exist or not). They hold perspective that core of Islamic law and also highest aims of Islamic law is *li tahqiq masholih al-ibad* (the realization of public good). For that kind of reason, Kyai-Nyai whose know the empirical case or engaged with this problem, they would be very sensitive with the problem relating

with sexuality and health reproduction issues with analyzing the angel of realization of public good for human kind, without differs between race, sex or social stratification between the human.

Based on this book, there are three principal pointers, *First;* the significance of socialization and dissemination toward Kyai-Nyai Pesantren about the concept and empirical case which dealing with sexuality and health reproduction. *Second*, the participation of Kyai-Nyai in the process of making people to be aware with the issue of sexuality health reproduction is very urgent. *Third,* There is necessary to discover a new method in developing new law which combining between the method of *istidlal* which mean deductive with *istiqro'* with inductive (based on the factual finding from the field) or with the term *scientific cum doctriner*.

I would be aware that this book is still far from being perfect, but there is a deeply wish that this book would become a positive contribution, practically in the development of theory which deals with the problem of the sexuality and the reproductive rights in Indonesia.

Yogyakarta, 11 November 2024
Yours Faithfully,

M. Ikhsanudin

My Deep Gratitude and Valuable Thanks:

1. Dr. Michel L. Tan (Program Director), Dr. Soledad Dalisay, Prof. Dr. Muhadjir Darwin, Prof. Pimpow Bonkonhon who patiently and constructively guide, advice and comment on the process of writing the book.
2. *Kyai* and *Nyai*, Teacher and staff of *Pondok Pesantren* (Islamic Boarding Schools) especially the informants of the research.
3. My dear Father and Mother whose greatest wish for me and always give me a support and motivation to study and *ngaji* at Pondok Pesantren.
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CHAPTER

I

The Role of Javanese Ulama in Promoting Sexual Health and Reproductive Right

This book intends to discuss the responses of *Ulama' Pondok Pesantren* in Java and their dynamic thoughts about the issue of sexuality. The meaning of Sexuality matter, in this book, covers the circumcision, the sexual orientation (heterosexual, homosexual, lesbianism, etc.), the sexual violence (marital rape, rape, incest, dating rape), the abnormal sexuality, sexually transmitted disease and HIV-AIDS which will be studied from *Ulama's* perspective; it is called *Fatwa Ulama*. Fatwa is the legal formal advice from an authority dealing with lawful matters and religious dogma. The position of *Fatwa* is very crucial in Islam as stated by Prof. Dr. M. Atho' Mudhor, an expert on Sociology of Islamic Laws. Fatwa belongs to one of four Islamic thoughts produced besides *Fiqh* literatures, the court decision and legislation. Besides, H.A.R. Gibb (1969) also states that Islamic law is the most effective and influential agent in empowering the social order in the life of Moslem community.

This rationale study of the book is the fact that a sexual matter is still a controversial discourse and categorized as the taboo area.

Social scientists are accusing Islamic understanding which grasped by *Pondok Pesantren* which marginalized Moslem women. There are some religious references or *Kitab Kuning* considered as *Bias*, pejorative to women and misogynistic, for example *Uqudulujain, Qurrotul uyun, Qurrotul a'yun* and other *Fiqh* books. One impact of this world view is less respect from the components of *Pondok Pesantren* towards women, and it creates unbalanced roles between men and women including the relation in the scope of sexuality. One example of the teaching that is misogynistic is statement that a wife must really serve and devote to husband whenever the husband needs to have a sexual relationship, the matters related to the reproductive health and right as a vital thing is less or even disregarded. The statement may be found on the book *Sunan Abu Dawud*: "From Abu Hurairah, he said, Rasulullah SAW states that: "*If a husband asks his wife to go bed (for having sexual relationship), she, however, refuses, then the husband falls asleep at that night angrily to her, the angles will curse her until daybreak*." Likewise Ath-Thusi's narrative mentiones that the best wife is who wants to give all life in completing his husband's sexual desires and she does not behave coolly to him (M. Tholib: 2002) and also other misogynistic narratives about the issue of sexuality. In the sense, the religious morality often becomes the basic legitimation of a sexual relationship in which it often causes the occur of sexual violence such as a marital rape which is packed by religious fundamental belief.

However, the incoming of gender issues, the reproductive health and rights, and the appearing of Islamic study can not only be approached partially and automatically but alsoby combining between deductive-normative methods. In practice, inductive-empirical methods have born new awareness at *Pondok Pesantren*. It stimulates ideas to the significance of reviewing religious texts that become references and legitimacy in their lives all of the time.

The critical study towards references in reality has been begun by *Pondok Pesantren*.

Normatively, according to *Pondok Pesantren's* books, the sexual matter is a part of important relationship that must be regulated in a religious, social, ethical and spiritual frame. Prophet Muhammad himself has a certain regulation in treating his sexual desires. It definitely indicates that Islam as a religion learnt in *Pondok Pesantren* has a close relationship with sexual matters; therefore they are not absolutely taboo matter. It is obviously seen when someone reads carefully many Fiqh literatures or *Kitab Kuning* which are learnt at *Pondok Pesantren* such as *Ihya' Ulumuddin* which is written by *Imam Ghozali, Minhajul Muslim* which is written by Abu Bakar al-Jazairi, *Fiqh Sunah* which is written by Sayid Sabiq, *Al-Fiqh al-Islamy Wa Adillatuhu* which is written by Wahab Az-Zauhaili, *I'anah Ath-Tholibin* which is written by Abu Bakar Syatho etc,. On those books, there is a certain chapter which particularly discusses the sexuality matters. Some of the chapters are husband-wife's rights and obligations in communicating their sexual desire, the ethics in bed, how to achieve orgasm together, the way to identify sexual relationship conducted through an illegal marriage, menstruation, how to have a good sexual relationship in Islam, the medical operation to change genitals, HIV-AIDS belongs to things that breaks marriage or not etc. Those books also clarify that the women exactly become objects of completing men's sexual desire in which it is one of their basics religious teachings.

Recently, *Pondok Pesantren* becomes one of the responsive institutions toward contemporary problems**.** Discussion of *Fiqh* which carried out by Ma'had Aly *Pondok Pesantren* As-Salfiyyah Situbondo, East Java, in Islamic law (*Fiqhiyyah*) has given a wide portion in response to the contemporary sexual problems such as the problems of sexual orientation (Homosexual and Lesbian),

the sexual exploitation in mass media, abortion, the oral sex, the informal marriage, HIV/AIDS, etc. Then, the results of the discussion has been documented in a book which is published by LkiS and have been entitled "*Fiqh Rakyat*". The book is the real Santri's progressive discussion about the sexual matters. Likewise, the discussion at *Pondok Pesantren* Al-Falah Ploso Kediri, East Java, also affords a certain space of the sexuality issue. They discuss the sexual matters such as the early ejaculation, the woman circumcision, the sexual relationship ouside legal marriage, the informal marriage etc. The discussion is also held at *Pondok Pesantren* Al-Munawwir Yogyakarta two years ago to discuss a crucial *Fiqh* problem in terms of *Ruthbatul Farji (*Liquids coming out from vagina) is comprehended from the basis of Islamic laws.

Many *Pondok Pesantren* participate in the gender critical study networking, the reproductive rights and health. For example, some of them which are definitely active in Islamic study networking and women reproductive rights and health in DIY and central Java make program to increase the knowledge of reproductive rights and health by joining with some independent organizations. They are facilitated by Yayasan Kesejahteraan Fatayat (Fatayat Welfare Foundation), also Rahima, an Non-Government Organization from Jakarta. These programs have formed a interrelated networking in 13 *Pondok Pesantren* in Indonesia for the Islamic round-table studying concerning with the issues of sexual matters. The amazing progress is when *Pondok Pesantren* Al-Falah in West Magelang, Central Java is definitely ready to be a shelter for women who are infected HIV/AIDS and a *religious Leader* (called *Pondok Pesantren*'s caretaker) has attended HIV/AIDS training in Australia. It is absolutely interesting here to research the progress of discourse and also *Pondok Pesantren* action in discussing the sexuality matters.

This book intends to study Ulama' Pesantren Java response and their dynamic thought about sexuality, reproductive right

and healt. The sample of Kyai or Nyai pesantren based in flow of mainstream thought that represented by five categories, *Al-Ma'had As-Salafy* (Traditional Pesantren), *Al-Ma'had Al-Ashry* (Modern pesantren), *Al-Ma'had Al-Aly* (Post Traditional Pesantren), Pesantren Mahasiswa (*college Pesantren*) and *Pesantren Revivalis* (Revival Pesantren). From every typology is represented by one Kyai and one Nyai. The method for collecting the data was through library research, in-depth-interview and live history. From the early beginning the model of analysis is on going analysis, result of field data categorized with fit and work in the grounded research and it analyzed with content analysis and reflective analysis. And the method of writing this report is narrative and also quoted directly from informant.

PONDOK PESANTREN

Roudlotut Thullab

WONOSARI – PRAJEKSARI – TEMPURAN

MAGELANG – JAWA TENGAH

CHAPTER

II

Conceptual Foundation on Islam, Gender and Reproductive Right

A. Gender Equality in Islamic Discourse

Discourse about the equality of men and women (read: Gender) constitutes global phenomena which penetrates beyond religion, culture, and tradition boundaries. The issues about the relation of men and women, if it is related to Islam, still become controversial issues. The issues can not be only approached by the final exposition of social aspect, cultural aspect, political aspect, and other aspects which include the doctrines. Sides of pro-status quo or Revivalism consider that the equality between the men and the women has become God's fate that can not be changed[1]. Meanwhile, other sides of pro-change state that Islam does not have any tendency to

1 The discussion which perpetuates the superiority of the men towards the women can be read on the classical books which discuss about the relation of the husband and wife such as *Uqudulujjain, Qurrotuil Uyun, Irsyad A'yun, Irsyad Zaujjain* and others. The classical books are so familiar and taught at *Pondok Pesantren* (Moslem boarding schools) particularly *Pondok Pesantren Salafiyah.* Particularly for the book *Uqudulujjain* has been given the critical and constructive discussion on the perspective of gender which is put in the forms of *Ta'liqot* by forum kajian kitab kuning (FK3, 2001). Furthermore, look at the book *Ta'liq Wa Takhrij 'Ala Syarkhi Uqudulujjain* (Jakarta: FK3, 2001). The discussion results FK3 are then anti thesized by Kajian FKIT on *"Menguak Kebatilan dan Kebohongan Sekte"* FK3 (Pasuruan, FKIT RMI, 2004)

discriminate humans either it is based on races, ethnics, skin colors, or sex. All humans, men and women, carry out the same obligations in which it is based on the terminology of Islamic laws is known as Convert (*Mukallaf*), the objective standards which become an absolute criterion is piety and devoutness of each person[2].

The position of women in the Islamic perspective can be studied normatively and historically[3]. Normatively, it means that the position of women is learnt and comprehended on the Islamic perspective according to the normative doctrines as written on *Al Qur'an* (The sacred book of the Muslims that is written in Arabic and contains the words of Allah SWT as revealed to Prophet Muhmmad SAW) and *Hadis* (A traditional collection of stories related to Prophet Muhmmad' deeds and words). Meanwhile, historically, it means that the position of woman is understood from the circumstances in which the women live in the middle of society included the social, political, and cultural circumstances.

2 Many Moslem intellectuals of reform who pioneer the discourse can be looked at on Nawal Sa'dawi*, Qodhoya Al-Mar'ah Wa Al-Fikroh Wa Siyasah* (Mesir: Maktabah Matbuliy, t. th), Fatimah Mernisi, *The Veil And The Male Elite* which is translated by M. Masyhur Abadi, (Surabaya: Dunia Ilmu, 1997), Masdar F. Mas'udi, *Islam dan Hak-Hak Reproducksi Perempuan* (Bandung: Mizan, 2000), Husein Muhammad, *Fiqh Prempuan* (Yogyakarta: LKiS, 1999), Zaitunnah Subhan, *Tafsir Kebencian, Studi Bias Gender Dalam Tafsir Al Qur'an* (Yogyakarta: LKiS, 1999), LKAJ, Overview Kajian Teks Tentang Perempuan Dalam Islam, *Makalah Lokakarya* in Jakarta, Agust, 21-2, 2000, A. Muqsit Ghozali, Tubuh, Seksualitas Dan Kedaulatan Perempuan (Yogyakarta: LKiS – Rahima – FF, 2002), Elga Sarapung, Masruchah and M. Imam Aziz (Ed.), Agama dan Kesehatan Reproduksi (Jakarta: SH – YKF – FF, 1999) and others. Recently, there is a massive movement to conduct reinterpretation and conduct deconstruction towards various interpretations which are considered biased-gender and subordinate the women.

3 On the discourse of the religion study, the phenomena of variety of human can be looked at from various approaches. It is not only seen from the point of view of the divine normativity of teachings but also looked at from the point of view which relates to the understanding and interpretation of person-per-person and group-per-group towards the religious teachings. The religion normativity is established through the doctrinal-theological approach, while historical variety of human is discussed through variety points of view of social-religious knowledge with characteristics of multi and interdisciplinary, either through the historical, philosophical, psychological, cultural approaches, or anthropological approach. Furthermore, look M. Amin Abdullah, Studi Agama, Normatifitas atau Historisitas (Yogyakarta: Pustaka Pelajar, 2002) page v.

The contextual approaches towards the meaning of normative teachings of *Al Qur'an* as it is suggested by the Islamic famous figures constitutes one of the efforts to observe and study the teachings as the answer of the demand of society's needs because of the recent development of social, economical, cultural, and technological changes. It means that there is a kind of demand to develop the Islamic teachings creatively to stay on referring on *Al Qur'an* to challenges of the period and the issues existing among the society.

The verses of *Al Qur'an* is actually set down in the social and historical contexts of Arabic society, so the meanings of *Al Qur'an* are also based on the circumstances at that period. When the period and the circumstances have changed, it should also be better to change the meanings of *Al Qur'an* and interpretation in concord with the situations and conditions of the change. Some verses of *Al Qur'an* which relate to the women should also be meant in accordance with the social and historical backgrounds. If in the recent time the development has happened which causes the women themselves also the change to follow the development of period, so the reference of mind which is based on *Al Qur'an* should also change. It is so crucial in considering what happens in the recent time is a kind of the marginalization of the woman existence which is based on the justification of the verses of *Al Qur'an*.

In the course of history, the significant role of Islamic religion as a perfect and complete religion is battering down the underdevelopment when the first time Islam came. One of the signals of the breakthrough is releasing the handcuff and also raises the honor and dignity of the women. Other examples are the existence of the verses of *Al Qur'an* which prohibit the men to get inheritance of a widow in force in which is the *Jahiliyyah*

tradition (The traditions which are conducted by the Arabian people before Islam came), prohibition of killing the women, the tradition of getting inheritance for the women, prohibition of conducting violence towards the women, and still many more. Actually, there are still many verses in which the intentions of the verses of *Al Qur'an* are to protect the women and to show that in the initial arrival of Islam, Islam take many progressive changes in terms of the position and the role of the women[4].

In relation to the lives of women and the change position of the women in the middle of society, the changes and the comprehension of paradigm in interpreting *Al Qur'an* and *Hadis* become absolutely significant. Considering that it does not separate from the culture where the society stays on. To comprehend a change and the position of women in a certain context, in general it is to know about how a society undergoes a change. Because of the reason, the frame of analysis showing the social components is extremely needed[5].

From the above explanation, it is clear that there is significant interaction between the descendants of the verses of *Al Qur'an* with the conditions and the changes that happen in the middle of society at that time. The next question is "Is the progress which is reached about the position and the role of women on the basis of *Al Qur'an* will be established?" The emphasis towards the implementation of the verses of which based on the textual meaning without paying attention the context of the social changes which

4 To look at the comparison between the women on the *Jahiliyyah* period, the period of Persi and Romawi empire and also after the Islam came, look at Moenawwar Kholil, *Nilai Wanita* (Solo: Ramadhoni, 1994) particularly chapter III which discusses about the position of women in the countries around the world and compare with chapter IV which discusses about the position of women on Islam. Compare also with Fadlurrahman, *Nasib Wanita Sebelum Islam* (Gresik: Putra Pelajar, 2000) and Sayid Muhammad Husain, *Dunya Al-Mar'ah* which is translated by Ali Yahya (Jakarta: Lentera, 2000).

5 One of the interesting books because it is related to the analysis of gender is a book written by Mansour Fakih, *Analisis Gender and Transformasi Social* (Yogyakarta: Pustaka Pelajar, 2001).

occurs is the same as neglecting the meaning of social an moral ambition which is contained. In other words, *Al Qur'an* should be interpreted in relation to the dialogue between the text and the context. It is based on the universal concept, Islam support the existence of the movement of justice gender.

Therefore, the discussion of Islamic laws where the laws are found (Man discover the law), not made by the men (Man made the law), so the paradigm, the method, and the law application of *Furu'* must refer to the ideal-moral ambition of Islamic laws in accordance with *Al-Qiyam Al-Asasiyah* (The basic principles of law). Ones of the examples of the construction of comprehension which is started from the paradigm of gender justice is the theory of *Tafsir* which is developed by Rifat Hasan, Nasaruddin Umar, Husein Muhammad, Zaitunah Subhan, Badriyah Fayumi, Nur Rofiah and others.

B. Sexuality, the Reproductive Right and Human Right

The reproductive right can be considered as the peak of change of a conceptual frame in the field of demography. The right of reproduction is the most progressive evolution from the concept of *Neo-Malthusianism* which develops in 1960 until the beginning of 1970 and the theory "*Development is the best contraceptive*" on the World Conference in Bucharest in 1974. The efforts to confirm the reproductive rights itself had a very long history since the International Conference of United States about the Human Rights in 1968, the Woman Conference in Mexico in 1975 and the Nairobi Conference in 1985.

The definition of *Health* according to World Health Organization (WHO) is not only related to the physical health but also related to the mental heath. The Declaration of *Alma Ata* which released by WHO and UNICEF in 1978 even added a new requirement

namely: "So that everyone will be able to live productively, either economically or socially ." With a new requirement, it is implied that on the definition of *Health* is also covered about the quality of life (Muhammad, 1998: 6).

Furthermore, in 1994 on the International Conference about Demography in Cairo, Egypt, the international succeeded on developing a new concept in terms of this matter. The right and reproductive health covers the reproductive organs and the functions, the process and the system which cover guarantee on the physical and mental safety, the right to determine freely and responsibly in terms of the amount, the birth range, the right to get information and infrastructures to manage the reproduction, the right to have the highest standard on the reproductive and sexual health, the right to make a independent decision from discrimination, forcing, and violence as it has been stated on the document of Human Right of United Nations. On ICPD (on Dwiyanto and Darwin, 1996: 21-22, Anwar and Abdullah, 2000: 20 and Muhammad, 1998) is exactly stated that:

"The reproductive health to is a state of complete physical, mental, and social wellbeing and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. The reproductive health implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicitly in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable, and acceptable methods of family planning of their choices, as well as other methods of their choice for regulation of fertility which are not against the laws, and the right of access to appropriate health care services that enable women to go safely through pregnancy and provide couples with the best chance of having a healthy infant (ICPD Program of Action)."

The implementation of the Cairo Conference takes fairly positive impacts for the society particularly with regard to the change of all this time view which considers that the matter of the reproductive and sexual life is a private matter so that it definitely taboo to be discussed before the public. It in turn gives the less advantageous impacts in terms of the matter of the right and reproductive health. The implementation of the Cairo Conference then was developed in further on the woman Conference in Beijing 1995. The Cairo Conference stated that the reproductive health constitutes the integral right which must be united on various national and international decisions. On Beijing Platform for Action is stated that: "Bearing in mind the above definition, the reproductive right embrace a certain human right that are already recognized in the national lwa, international human right documents, and other consensus documents …."

To be able to do the reproductive health healthily, in the physical, and social sense, is needed some requirements. First, there is no any anatomical or physiological aberration, either towards the men or towards the women. Second, either the men or the women need the psychological bases either towards the men or towards the women that give chance for the emotional development goes on well. Third, everybody should be free of the aberration and diseases, either directly or indirectly with respect to the reproductive organs. Fourth, a pregnant woman needs the guarantee that she will pass through the pregnancy time safely.

Masdar F. Mas'udi[6] implements three categories about the rights of the women as the guardian of the reproductive functions. First, the rights of safety and health guarantee in terms of the choices to carry out, use, or refuse the usage of the reproductive organs. The rights clearly leave a definitely dangerous risk that can happen

6 More complete about it, read the book written by Masdar F. Mas'udi, *Islam dan Hk-Hak Reproduksi Perempuan.* On the book, it is elaborated in detail about the empowering of *Fiqh* about the reproductive rights in the Islamic perspectives

to the women in carrying out the reproductive functions started from menstruation, having pregnant, giving baby, and giving suck. Second, the guarantee of proper life or the wealth guarantee. It is not only during the process of the vital reproduction (Having pregnant, giving baby, and giving suck) goes on, but also outside the process of having pregnant, giving baby, and giving suck in which the woman has status as a woman or a mother. Third, the women have rights to determine the matters relating to their interests particularly on the reproductive process.

Thus, it is so clear that the right of reproduction is a conjugation of the human rights which cover three basic human rights. First, The rights from the couple or individual rights to determine freely and responsibly in terms of the birth amount and the birth range, and the right to attain information and the devices for that. Second, The rights of getting the standard of the sexual and reproductive health. Third, The rights to make a decision which is free from discrimination, forcing, and violence.

C. Sexuality in the Discourse of Classical Islamic Laws (*Fiqh*)

The discussion about sexuality may be found on the classical Islamic laws at *Pondok Pesantren* or usually known as *Kitab Kuning* (The yellow books is traditional collection containing the Islamic laws and usually published by using the yellow papers) particularly the discussion about *Rubu'ul Munakaha* (The stipulation getting married) (The quarter of *Fiqh* books in the field of A Marriage) and the chapter of *Jinayah* (The chapter of Criminal laws). The discussion also exists on many small books of *Fiqh* which are learnt at *Pondok Pesantren* or many large books of *Fiqh* which become the standard reference (*Mu'tabar Muhkamad*). The discussion on the books talks about the sexuality in *Shorih* (The open and honest discussion) and in detail, but there are also the books which discuss the sexuality in glance on the chapter of *Munakah* and *Jinayah*. The followings

are the list of 15 books of *Fiqh* which are learnt at *Pondok Pesantren* and they also cover the discussion about the sexuality, the rights and the reproductive health.

No	Title of books	***Muallif*/writer**
1	Safinatun Najah	Salim bin Abdullah (W. 1271 M)
2	Kasyifatussaja'a	Muhammad Nawawi Al-Bantani Al-Jawi (1230-1314 H)
3	Taqrib/Mukhtashar Abu Syuja'	Ahmad bin Husain or Abi Syuja' (433-593 H).
4	Fathu Al-Qorib	Syamsuddin Muhammad bin Qasim Al-Ghazi Asy-Syafi'i (859-917)
5	Hasyiyah Al-Bajuri Ala Fathu Al- Qorib	Ibrahim bin Muhammad bin Ahmad Al-Bajuri (1198-1277 H).
6	Kifayah Al-Akhyar	Taqiyuddin Abi Bakar bin Muhammad Al-Husaini ad-Dimasyqi (752-829 H)
7	Al-Iqna' Fi Halli Alfadhi Abu Syuja'	Muhammad bin Ahmad Asy-Syirbini Al Khattib Asy-Syafi'i (W. 977 H)
8	Fathu Al-Mu'in	Ahmad Zainuddin bin Qadhi Muhammad Al-Ghazali Al-Malibari-Al-Fanani (938-1028 H)
9	Nihayah Az-zain	Muhammad Nawawi Al-Bantani Al-Jawi (1230-1314 H)
10	Hasyiyah I'anah Ath-Tholibin	Sayyid Abi Bakar Syatha Ad-Dimyathi (1266-1310 H)
11	Minhajuth Thalibin	Abu Zakariya Muhyiddin An-Nawawi Ad-Dimasyqi (631-676 H)
12	Fathu Al-Wahhab	Syaikh Zakariya Al-Anshari (926 H)
13	Al-Muhadzab Fi Al-Fiqh Asy-Syafi'i	Abi Ishaq Ibrahim Asy-Syairazi Al-Fairuzzabadi (393-476 H)
14	Rohmah Al-Ummah Fi Ikhtilafil Aimmah	Muhammad Abdurrahman Ad-Dimasyqi
15	Al-Mizan Al-Kubro	Abil Mawahib Abdul Wahab Al-Anshori
16	Fiqh As-Sunnah	Sayid Sabiq

17	Bidayah Al-Mujtahid Wa Nihayah Al-Muqtashid	Ibnu Rusydi
18	Al-Fiqh 'Ala Al-Madzahib Al-Arba'ah	Abdurrahman Al-Jaziri
19	Al-Fiqhu Al-Islamiy Wa Adillatuhu	Wahbah Az-Zuhailiy

The books beyond the Syafi'i *Mazhab* (The school or the way of thought of the *Fiqh* experts) which are learnt more at *Pondok Pesantren* as mentioned from no. 14 to no. 19 also discuss about the sexuality and the reproductive right on the standard of *Fiqh Nikah* (The *Fiqh* laws about Marriage) and *Fiqh Jinayah*(The *Fiqh* laws about Criminal actions).

The books that become the reference at *Pondok Pesantren* and discuss about sexuality and reproductive rights such as *Uqudullujain Fi Bayani Hudud Az-Zaujain* written by Imam Nawawi, *Minhajul Muslim* written by Abu Bakr Jabir Al-Jazairi, and *Qorrotul Uyun Finnikahi Syar'i*. On *Uqudullujain Fi Bayani Hudud Az-Zaujain*, the issues of sexuality and reproductive rights are learnt on the chapter The Rights of Husband and the Rights of Wife. On *Minhajul Muslim* the issues of sexuality and reproductive rights are learnt on the chapter Ethics of Husband and Wife, sub-chapter The Rights and The Obligations of Husband-Wife and on chapter Pidana *Hudud* (The criminal laws). The discussion of the two books cover various model of marriage such as *Nikah Syighor* (The little marriage), *Nikah Kontrak* (The contracted marriage), *Nikah Dini* (The early marriage), Etika di Ranjang Pengantin (Ethics on the Bed for the Bride and the Bridegroom), *Khuntsa Musykil* (Transvestite homosexual), Perzinahan (Committing adultery), *Al-Liwath* (Home sexual or Lesbian), and other discussions (Al-Jazairi, 1976: 83-89, 372-374, and 450-453).

The vulgar and detailed discussion about the issue of sexuality and reproductive rights can be found on *Qorrotul Uyun Finnikahi*

Syar'i. On the book, it is discussed about the law of a marriage which can change from *Wajib* (Ordered, something that the performence of which yields merit or *Pahala* but the avoidance of which is sinful or *Berdosa* or something that should be done based on the Islamic laws or rules), *Haram* (Prohibited, forbidden or something that the avoidance of which yields merit or *Pahala* but the performance of which is sinful or *Berdosa*), *Makruh* (Something that the avoidance of which yields merit or *Pahala* but the performance of which is not sinful or *Berdosa*), and *Sunnah* (Something that the avoidance of which is not sinful, but the performance of which yields merit) based on the intention and the pre-requisites. Another discussion is about the way to get the ideal partner of life, getting in honeymoon, the ethics of having a coitus, the position of having a coitus, the law of '*Azl* (The broken coitus or *Coitus interruptus*), *Nikahul Yad* (Onani), the ethics of the daily interaction of husband–wife, and other issues. The book also explains in detail about the issue of sexual relationship, the interaction in a household relationship, the preparations of entering the husband-wife life, and other models of sexual relationship which can make the partner satisfied in accordance of the Islamic laws.

Generally, the discussion on the classical books still puts the position of women as "*The Second Person*" in fulfilling sexual rights and sexual obligations. It means that a woman should obey towards the husband's interests in conducting a sexual relationship as long as the demand does not crash *Syari'at Islam* (The Islamic laws). The example of the sexual relationship which is forbidden and considered crashing the Islamic laws is a certain sexual relationship through anus (Sodomi), the sexual relationship which is done when the woman is having menstruation and having birth, and the sexual relationship which is done in violence. In that condition, the woman can refuse of doing the sexual relationship. But, on the books, there is also a kind of respect towards the woman such as

the husband's obligations to make the wife satisfied and begging permission towards the woman of doing '*Azl* (The broken coitus or *Coitus interruptus*), and a must to conduct *Pemanasan* (Foreplay or warming up before conducting a sexual relationship). On *Qorrotul Uyun Finnikahi Syar'i* on the chapter the Ethics of Having a Coitus, *At-Tihamy* states:

> "Conducting coitus should be preceded by a little joking with the wife, little playing, doing a feeling of being intimate by conducting something which is allowed such as holding the female breast, embracing, hugging, kissing the cheeks, forehead, neck, the female breast, stomach and all body. It is provided that not kissing both eyes because kissing both eyes of wife can cause a separation and never doing all although it is in condition of forgetfulness. It is based on *Hadis* of Prophet Muhammad SAW stating that: "Never one of you conducting coitus with a wife as it is conducted by animals. It is better for you to use a certain mediation. Then asked to the Prophet Muhammad SAW, "What is meant by the mediation", Prophet Muhammad SAW answers: "It is *Al-Qublah* (Kissing) and *Al-Kalam* (flatter/ attempt to persuade his wife)."

On *Qorrotul Uyun* is also appeared the spiritual dimension when a man wants to do a sexual relationship. *At-Tihamy* states: "The husband orders the wife to get *Wudhu* (A ritual ablution before prayers), then doing *Sholat Maghrib* (Evening Pray), *Sholat Isya'* (Night pray), and *Sholat Sunnah* (Optional pray) in two units of prayer ritual, then conducting prayed together and the last conducting a sexual relationship by embracing, kissing, and henceforth (At-Tihamy, t. th: 29-30)." It shows that the sexual relationship according to At-Tihamy is not only on the biological dimension, but also the spiritual dimension.

While, on the books about the principles of Islamic laws also discuss about the issue of sexuality and reproductive rights. On *Al-Asybab Wa Nadhoir* written by *As-Suyuthi*, there are some

chapters discussing about the issue of sexuality and reproductive rights such as *Ahkamil Khuntsa* (Chapter Transvestite homosexual or *Waria*), *Untsa* (The laws about the women), *Al-Qoul Fi Taghyib Al-Hasyafah* (The discussion about entering penis) and the tenth principle of the laws which relate to *Wath'i* (Sexuality) (As-Suyuthi).

D. Sexuality on the Discourse of Fatwa Ulama' Indonesia

The discourse of sexuality is also discussed by *Majelis Ulama' Indonesia* (Indonesian Council of Religious Sholars), either on *Komisi Fatwa Majelis Ulama' Indonesi, Forum Lajnah Bahsul Masa'il Nahdhotul Ulama'* or on *Majelis Tarjih and Pemikiran Muhammadiyah*. The consideration of choosing the three social-religious institutions is because the three social-religious institutions have many adherents around Indonesia and they also have different type of establishing a certain law. *Nahdhotul Ulama'* is known as the representative of traditional Islamic society, and *Muhammadiyah* is known as the representative of modern Islamic society, and *Majelis Ulama' Indonesia* is known as the neutral institution, the representative of many social-religious organizations in Indonesia.

On *Himpunan Fatwa MUI*, the discussion about the issue of sexuality and reproductive rights is written on 13 *Fatwa*, namely: a) The decision of *Fatwa* MUI on January 12, 1979 about the usage of pills anti-menstruation. b) The decision of *Fatwa* MUI on October 25, 1997 about Nikah Mut'ah (Contracted Marriage). c) The decision of *Fatwa* MUI on October 20, 1983 about the demography, Health, and National Development. d) The decision of *Fatwa* MUI on November 30, 1995 about the Anticipation of HIV/AIDS. e) The decision of *Fatwa* MUI on June 24, 1997 about the demand of the usage of *Syari'at Islam* in having attitudes, in getting along with, and taking care of the sufferer of HIV/AIDS. f) The decision of *Fatwa* MUI on November I, 1997 about the position of Transvestite homosexual or *Waria*. g) The decision of *Fatwa* MUI No. I/National

Congress VI/MUI/2000 on July 30, 2000 about Abortion. h) The decision of *Fatwa* MUI No. 8/National Congress VI/MUI/2000 on 28 July, 2000 about the Gender Bias. i) The decision of *Fatwa* MUI No. 287 2001 about pornography and porno-action. j) The decision of *Fatwa* MUI on July 13, 1979 about Vasectomy and Tubectomy 331. k) The decision of *Fatwa* MUI on June 1, 1980 about the medical operation of changing or completing genitals. l) The decision of *Fatwa* MUI on June 13, 1979 about the Artificial Insemination (*Bayi Tabung*) (MUI, 1984)

While, the decision which relates to the issue of sexuality and reproductive rights on *Bahsul Masa'il Nahdhotul Ulama'* consist of at least 37 decisions of law. The decisions of law are yielded from *Bahsul Masa'il* on *Konferensi Besar* (The great Conference), *Musyawarah Nasional Alim Ulama'* and *Muktamar* (The national Congress). The discussion includes the discussion about the sexual orientation, *Keluarga Berencana* (The Family Planning), the medical operation of replacing or confirming of genitals, the anticipation of HIV/AIDS, *Pernikahan Dini* (The early Marriage), *Nikah Mut'ah* (The contracted Marriage), and other issues.

The writer proposes an example as the result of learning about the issue of sexuality. First, The issue of *Nikah Mut'ah* (The contracted Marriage). According to *Nahdhotul Ulama'*, the law of *Nikah Mut'ah* (The contracted Marriage) is *Haram* (prohibited or forbidden) and *Tidak Sah* (Illegal or cancelled based on the Islamic Law). It refers to the opinions of *Ulama' Ahlussunnah Wa Jjama'ah* particularly the four *Madzhab* (The scientific disciplnes which are introduced by Imam Hanafi, Imam Hambali, Imam Syafi'i, and Imam Maliki). The basis of the argumentations is taken from *Kitab Salaf* (The yellow books) such as *Al-Umm* written by Imam Syafi'i volume V page 71, *Fatawi Syar'iyah* written by Asy-Syaikh Husain Muhammad Mahluf volume II page 7, *Rohmatul Ummah* page 21,

I'anah Tholibin Volume III page 278-279, *Al-Mizan Al-Kubro* volume II page 113, and *Asy-Syarwani Al-Tuhfah* volume VII page 224. On one of the argumentations which is quoted from the *Rohmatul Ummah*, for example is stated that:

> "*Ulama'* agree that the law of *Nikah Mut'ah* (The contracted Marriage) is *Haram* (prohibited or forbidden) and *Tidak Sah* (Illegal or cancelled based on the Islamic Law) without any different opinions among them. The sense of *Nikah Mut'ah* (The contracted Marriage) is a man gets to marry a woman in terms of a certain time by saying: "I marry you for a month, a year, and the like." The marriage is illegal and the allowance has been cancelled by *Ulama'* in the past and by *Ulama'* in the recent time (Sa'ad and Ma'ruf Asrori, 2004: 528-530)."

Second, the discussion about *Keluarga Berencana* (The Family Planning) and the contraception on *Nahdhotul Ulama'* is discussed on some *Muktamar* (The national Congress) and *Konferensi Besar* (The great Conference) namely *Muktamar Nahdhotul Ulama'* XIII in Banten on July 12, 1938 about the law of getting medicines to prevent the pregnancy, the decision of *Konferensi Besar Nahdhotul Ulama' I* (The great Congress of Association of Muslim Scholars) in Jakarta on July 18-28, 1960 about *Keluarga Berencana* (The Family Planning), and *Muktamar Nahdhotul Ulama'* XXVIII in Krapyak, Yogyakarta on November 25-28, 1989 about the usage of Vasectomy and Tubectomy and the usage of Spiral/IUD.

On *Muktamar Nahdhotul Ulama'* XIII in Banten, *Nahdhotul Ulama'* only discusses about the issue of the usage of the medicines to prevent pregnancy because it can be taken into preventing the infection of diseases. *Muktamirin* (The members of *Muktamar*) decide that the law of the usage of the medicines to prevent pregnancy because it can be taken into preventing the infection of diseases is not allowed and *Haram* (Prohibited, forbidden) although there is fear of being infected by a disease. *Muktamirin* also confirm

that the fear is only assumption that has not happened. The decision is based on the book *Talkhisul Murod Hamisy, Bughyah,* and *I'anah Ath-Tholibin*. The quotation of the text taken from *Talkhisul Murod Hamisy* is: "*Abdussalam and Ibnu Yunus state that it is not Halal (it is illegal, not rightful) for the women to use any medicine to prevent pregnancy although it is permitted by the husband."* While, on *I'anah Ath-Tholibin* is firmly stated that: "It is *Haram* (Prohibited, forbidden) to use any thing that can prevent pregnancy" (Sa'id and Ma'ruf Asrori, 2004: 223).

The enough and appropriate discussion about the limitation of children or descendents or *Keluarga Berencana* (The Family Planning) was carried out on *Konferensi Besar Nahdhotul Ulama' I* in Jakarta on July 18-28, 1960. *Nahdhotul Ulama'* stated that can be looked at from two points of view. First, The law of *Keluarga Berencana* is *Makruh* if it uses any medicines that can prevent or hamper the reach of sperm towards the woman's womb. It is also by drinking any medicine to decelerate the childbirth. Second, *Nahdhotul Ulama'* states *Haram* (Prohibited, forbidden) towards any deed that can stop or quit the child birth except there are dangerous causes. The basis of the statement is taken from *Asnal Matholib* page 186, *Fatawi Ibnu Jawad* page 249, *Al-Bajuri* volume II page 93, and *Ahkamul Fuqoha'* volume 2 page 231 (Sa'id dan Ma'ruf Asrori, 2004 : 292-203)[7]. One of the argumentations of *Nahdhotul Ulama'* which is implicitly states is on *Al-Bajuri* in which it is stated:

> "So is the woman using anything (such as the contraception device) that can decelerate pregnancy. The law of it is absolutely *Makruh* (Something that the avoidance of which yields merit or *Pahala* but the performance of which is not sinful or *Berdosa*). While breaking off the descendents of the childbirth is *Haram* (Prohibited, forbidden). And when it is in an emergent condition, so it is in accordance with *Fiqhiyyah* principle: "If there are two

7 Mean of ahkamul fuqoho' volume 2 is ahkamul fuqoha' in old version is published by Thoha Putra, Semarang.

> dangers which threaten each other, so it needs to keep on guard against the more harmful danger by conducting the one which has less harmful danger."

The issue of *Keluarga Berencana* (The Family Planning) then is discussed and decided on *Muktamar Nahdhotul 'Ulama'* (The great Congress of Association of Muslim Scholars) on September 25, 1969 containing about the boundaries of *Keluarga Berencana*. First, *Keluarga Berencana* should be meant as the arrangement and deceleration of pregnancy for the sake of wealth mother and children. Second, *Keluarga Berencana* must be based on for the sake of wealth mother and children, it not caused by the fear of starvation, destitution, and other fears. Third, *Keluarga Berencana* may not be committed by abortion of early pregnancy. Fourth, *Keluarga Berencana* may be allowed of damaging and destroying the reproductive functions of husband-wife organs. Fifth, *Keluarga Berencana* is a private matter or a voluntary acquiescence, not a mass movement based on the forced establishment or rules. Sixth, *Keluarga Berencana* has to be done by the agreement of relating husband-wife couple. Seventh, *Keluarga Berencana* must not resist with Islamic laws and moral norms. Eight, *Keluarga Berencana* should be carried out properly in order to be abused for wicked interests or immoral deeds (Ka'bah, 1999: 177).

The next discussion of *Keluarga Berencana* with regard to new cases which are studied on *Muktamar Nahdhotul 'Ulama' XXVIII* (the biggest religious-social organization in Indonesia) is the issue of usage of Vasectomy and Tubectomy. The participants of *Muktamar* decide that the usage of Vasectomy and Tubectomy is not permitted. The decision firmly states that:

> "The deceleration of childbirth by any way can be permitted if it can extinguish the absolute functions of having descendants and not vanishing the functional parts of body (Sa'id and Ma'ruf Asrori, 2004:477)."

The argumentation used to determine the issue of the usage of Vasectomy and Tubectomy is taken from *Kitab Kuning* (the traditional collection of writing which are written by Islamic scholars and it is about laws pertaining to ritual obligations. It is usually has yellow color so that called *the Yellow Book*) such as: *Al-Bajuri 'Ala Fath Al-Qorib* volume II page 93, *Al-Bujairimi 'Alal Iqna* volume IV page 40, *Nihatul Muhtaj* volume VIII page 416 and *Ghoyah At-Talkhis Am-Murod Fatawi Ibnu Ziyad* page 25. One of the argumentations which can be read on *Al-Bajuri* is:

> "It is *Haram* (Prohibited, forbidden or something that the avoidance of which yields merit or *Pahala* but the performance of which is sinful or *Berdosa*) to use something (like medicines) which can break off the definitely pregnancy (so that) the woman can not have pregnant again). While something which can decelerate the pregnancy for a certain time and does not break off the definitely pregnancy, it is not *Haram* (Prohibited or forbidden). And even it is not *Makruh* (Something that the avoidance of which yields merit or *Pahala* but the performance of which is not sinful or *Berdosa*) because of a certain barrier that is understood in connection with Islamic laws like a must previously to educate a child. If there is no any reason, so the law is *Makruh* (Sa'id and Ma'ruf Asrori, 2004: 448)."

With regard to the issue of Spiral/IUD, *Nahdhotul 'Ulama' (NU)* decides the basic law is *Mubah* (Neutral, neither forbidden nor required) as the law of *Azl* and contraception equipments, but *Nahdhotul 'Ulama'(NU)* proposes a strongly suggestion that in setting the equipments, it is not allowed to look at *Aurat Mugholladhoh* (The absolute genitals of women). Hence, someone who sets the equipments is someone who is justified by the Islamic and *Syara'* (Reasons of avoiding ritual obligations which are justified by the Islamic rules) law like a husband.

"Basically, the law of using Spiral/IUD is allowed, the same as *Azl* or the other contraception equipments, but because the way of

setting them must look at *Aurat Mugholladhoh* (The absolute genitals of women), so the law becomes *Haram* (prohibited or forbidden). Therefore, it must be attempted to use the way suggested and justified by the Islamic and *Syara'* (Reasons of avoiding ritual obligations which are justified by the Islamic rules) law like a husband puts the equipments towards his wife (Sa'id and Ma'ruf Asrori, 2004: 449)."

There are five arguments of *Kitab Kuning* which become the primary basis, such as: *Sulamut Taufiq, Al-Qolyubi* volume III page 221, *Mughni Al-Muhtaj* volume III page 123, *Al-Bajuri* volume II page 99 and *Kasyiyah As-Saja* page 50 (Sa'id and Ma'ruf Asrori, 2004: 449).

The third discussion is about the medical operation of replacing genitals which is studied deeply on *Muktamar Nahdhotul 'Ulama' XXVII* in Semarang on june 5-11, 1979. The participants of the *Muktamar* finally state that the medical operation of replacing genitals is *Haram* (Prohibited or forbidden) (Sa'id and Ma'ruf Asrori, 2004: 351). The basis of argumentation is *An-Nisa'* verse 119 and the explanation of it can be found on the yellow book *Tafsir Ash-Showi* (the interpretation of *Ash-Showi*). The Commandment of God on *An-Nisa'* verse 119 is: '…. They change the creatures of Allah SWT, so they really change it …." And in the category of changing according to the participants of *Muktamar* is changing body by giving tattoo and changing hairs by wearing wig (*Rambut palsu*). The discussion on *Muktamar* only discusses the answer which is based on the generally basic law that is the medical operation of replacing genitals is *Haram* (Prohibited or forbidden) (Sa'id and Ma'ruf Asrori, 2004: 352). It is based on the decision, *Nahdhotul 'Ulama'* then extends the explanation in referring to Seminar of Provincial Council of *Nahdhotul 'Ulama'*, east Java (PWNU Jawa Timur) on August 26-28, 1989 discussing the review of Islamic laws

with respect to the medical operation of substituting genitals. The review of Islamic laws is divided into three main issues such as;

1. A man and a woman who are normal and do not have any aberration either inside sexual organs or outside sexual organs, so because of a certain matter, he or she wants to be operated to replace the outside sexual organs. With respect to the issue, the participants of seminar state that it is *Haram* (Prohibited or forbidden) because it includes changing the creatures of Allah SWT and deceives other people (Sa'id and Ma'ruf Asrori, 2004: 352-360).
2. A man and a woman whose their inside genitals are normal but their outside genitals are not normal or the inside genitals are against the outside genitals, then they conduct the medical operation to equalize the inside genitals and the outside genitals, so it is *Mubah* (Allowed, neutral, neither forbidden nor required) if it based on the fixed purposes or definitely important purposes which can be justified by Islamic laws (Sa'id and Ma'ruf Asrori, 2004: 365).
3. Someone whose inside genitals is normal, but the outside genitals are not normal or the inside genital are the same as the outside genitals or the shapes of them are not perfect, she then conducts the medical operation to make the genitals perfect, so it is allowed or even better (Sa'id and Ma'ruf Asrori, 2004: 369).

Meanwhile, according to *Muhammadiyah* (The second biggest religious-social organization in Indonesia), the discussion about the sexuality issues can be found on some official books which are published by *Pimpinan Pusat Muhammadiyah* (the Centre of Administration of *Muhammadiyah*) such as: *Himpunan Putusan Tarjih/HPT* (the Compilation of Explanatory Decision), *Tanya Jawab Agama Islam* (Question-Answer of Islam) volume 1-5, *Membina Keluarga Sejahtera* (Creating a Prosperous Family), *Adabul Mar'ah Fil Islam* (Deeds of Woman According to Islam), *Bayi Tabung dan*

Pencangkokan dalam Sorotan Hukum Islam (Artificial Insemination and Infant Transplantation on Attention of Islamic Laws) and many other books. On *Himpunan Putusan Tarjih/HPT* and *Tanya Jawab Agama Islam*, the issues of sexuality and the right of reproduction are discussed on more than forty discussions about the issues of woman circumcision, *Keluarga Berencana* (the Family Planning), marrying a pregnant woman, the medical operation of genital confirmation, the medical operation of virgin membranes, and other issues.

The writer illustrates by proposing some examples taken from the discussion results of *Majlis Tarjih Muhammadiyah* (the explanatory Council of *Muhammadiyah*) with regard to the issues of sexuality and the right of reproduction. The first example is about *Nikah Mut'h* or *Nikah Kontrak* (the constructed marriage). The issue of the constructed marriage is discussed by *Majlis Tarjih Muhammadiyah*. It proposes the definition of *Nikah Mut'h* or *Nikah Kontrak* as a marriage which is committed by a man (a husband) getting married with a woman (a wife) in a range of a certain time. In other words, if the time which is agreed is over, the divorce definitely occurs (MT-PPI, 2003: 210). Then, *Majlis Tarjih Muhammadiyah* explains some *Hadis* (Traditional collection of stories relating to words or deeds of Prophet Muhammad) which relate to *Nikah Mut'h* or *Nikah Kontrak*. It is based on *Hadis (*As the chief sources of guidance for understanding religious questions), *Majlis Tarjih Muhammadiyah* declares that *Nikah Mut'h* or *Nikah Kontrak* is extremely *Haram* (prohibited or forbidden). The prohibition of *Nikah Mut'h* or *Nikah Kontrak*, according to *Majlis Tarjih Muhammadiyah,* obtains in general. It means that it is not only assigned for man and woman who know about their *Nikah Mut'h* or *Nikah Kontrak* but also for the woman although she does not know that her marriage is actually *Nikah Mut'h* or *Nikah Kontrak* (ibid: 211-215).

The second illustration is about the issues of *Keluarga Berencana* and contraception equipments. According to *Muhammadiyah*, the issue of contraception equipments is discussed on *Muktamar Muhammadiyah* (The great Congress of *Muhammadiyah*) in Pekajangan, Pekalongan in 1960, but the fixed decision is definitely established by *Muhammadiyah* on *Muktamar Muhammadiyah* in Sidoarjo in 1968. The decision then is stated as *Fatwa* (A binding rule in religious matters) of *Majlis Tarjih Muhammadiyah TJA I* and *TJA II* and is written on a book *Membina Keluarga Sejahtera* (Creating a Prosperous family) published by *Pimpinan Pusat Muhammadiyah Majlis Tarjih Muhammadiyah* (The centre Administration of *Muhammadiyah* of *Majlis Tarjih*).

The issues of childbirth restriction, the usage of contraception equipments and *Keluarga Berencana* according to *Majlis Tarjih Muhammadiyah* are allowed as an exception law. The decision of *Muktamar Khusus Muhammadiyah* (the great particular congress of *Muhammadiyah*) in Sidoarjo establishes the following decision. First, preventing pregnancy is against the Islamic teachings, so is *Keluarga Berencana* which is carried out by the pregnancy prevention. Second, in an emergent situation, the pregnancy prevention is allowed but it must be based on the husband-wife agreement and it does not bring about any disadvantage physically and mentally (PP *Muhammadiyah*, HPT: 308).

Himpunan Putusan Tarjih Muhammadiyah Proposes three emergent criteria which can be received by someone to do *Keluarga Berencana* as the following explanation. First, worrying the salvation of mother because having pregnant and giving childbirth if they are based on explanation of professional doctors. Second, worrying the salvation of religion and effects of straitened circumstances. Third, worrying the child health and education if the birth range is too closed. This consideration is definitely personal decision

which constitutes an absolute agreement of the husband-wife couple. *Majlis Tarjih Muhammadiyah* does not strongly justify a must of committing *Keluarga Berencana* through state rules (HPT, ibid: 309-310).

With respect to models of *Keluarga Berencana* by using Vasectomy and Tubectomy, *Majlis Tarjih Muhammadiyah* declares that the usage of Vasectomy and Tubectomy is a decision or deed that can not be justified by the Islamic teachings. In reference to *Fatwa Majlis 'Ulama' Indonesia* (A binding rule in religious maters released by Indonesian Council of Religious Scholars) and the decision of *Majlis Tarjih Muhammadiyah* in terms of *Keluarga Berencana* (the Family Planning) in Sidoarjo in 1969 states that the usage of Vasectomy and Tubectomy is absolutely *Haram* (Prohibited or forbidden) because it can destroy or change a certain organism either by cutting, deleting or by using other ways (HPT, ibid: 167-168).

The third illustration is the discussion of *Majlis Tarjih Muhammadiyah* about the medical operation of substituting genitals which is discussed on *Fatwa-Fatwa Tarjih* (An explanatory binding rule in religious matters) TJA I volume 1 (MTPPI, 2003: 165-166). On TJA I, the issue of medical operation relating to the genital substitution is divided into the medical operation of substituting or changing genitals and the medical operation of completing genitals. For the first category, *Majlis Tarjih Muhammadiyah* states that the medical operation of substituting normal genitals, the genitals which have normal and perfect functions, according to Islamic laws, is *Haram* (Prohibited or forbidden) because it may change the creature that is wished by Allah SWT and it is the seduction and temptation of Satan. It is also relevant with the Commandment of Allah SWT on QS *An-Nisa'* verse 118-119. Meanwhile, the medical operation of genital justification is a medical operation conducted

towards someone whose genitals do not have normal functions or have a certain aberration which makes the genitals can not function perfectly. In this case, the medical operation to make the genitals function perfect is considered as one the kinds of medical treatment and even constitutes a praised deed. It is because the medical operation of justifying genital functions has normalized the genital functions. It also means that it makes someone become normal physically, psychologically, and socially.

Majlis Tarjih Muhammadiyah also strongly justify that the artificial or plastic medical operation because of enjoyment motive, not because of a certain aberration that needs to be normalized is *Haram* (Prohibited or forbidden) and it is a kind of unwilling deed towards the fate of Allah SWT. Including the prohibited or forbidden medical operation is the medical operation to rehabilitate virgin membranes which are torn because of committing adultery or the intimate/genital relationship outside an official marriage. It is definitely categorized a tricky deed towards other people (HPT, ibid: 166-167).

E. Sexuality on The Discussion of Bahsul Masail Pesantren

The discussion of sexuality on *Bahsul Masa'il Pesantren* often goes sharp and interesting. Even, the results of the discussion have been published in the form of books and *Risalah Jumat* (The Friday treatise). On the book *Fiqh Untuk Rakyat* (Study of laws pertaining to ritual obligations for common people) which constitutes the book containing the discussion results of *Bahsul Masa'il* at *Ma'had Aly Pondok Pesantren Salafiyah Syafi'iyah* in Situbondo decides some the issues of sexuality and the right of reproduction such as: the issue of pregnancy outside official marriage, oral sexual activity, homosexuality and lesbian, sexual exploitation on mass media, sexual educations, *Nikah Sirri* (The hidden marriage), the disease of HIV/AIDS, the marriage scandal and other issues. The discussion

results about the oral sexual activity, for instance, which refers to opinions of *Imam Al-Ghozali* and *Iman Nawawi* states that the oral sexual activity is allowed if both enjoy each other and no force of doing it. Although, it is allowed on the basis of *Fiqh* (Study of laws pertaining to ritual obligations) but *Prophet Muhammad* and Islamic scholars never commit it. Therefore, it's better to avoid or not conducting it (Ma'had Aly, 2000: 268-273). Another example of decision is the issue of sexual orientation in the form of lesbian sexuality and homosexuality. It is stated *haram* (prohibited or forbidden) by strongly-established decision (*Muttafaq Alaihi*). The decision is based on the analysis of verse of Koran, *Hadis* (Stories relating to words and deeds of *Muhammad*) and *Fatwa Mujtahid* (A binding rule in religious matters stated by experts in Muslim laws who give independent interpretations of the Koran and *Hadis*) such as: *Al-Mu'minun* verse 5-7 and *Al-An'am* verse 55 (ibid: 176-181).

Meanwhile, on the book *Al-Fawaid Al-Jannah* which constitutes the discussion results of *Bahsul Masa'il Pesantren al-Khoziny* in Sidoarjo also discusses some issues of sexuality and the right of reproduction, such as: the disease of HIV/AIDS on marriage, the medical operation of substituting genitals, having sexual activity with someone who conducts the medical operation of substituting genitals. On the discussion of the disease of HIV/AIDS, it is decided that somebody who is infected the disease of HIV/AIDS may hold *Akad Nikah* (Marriage contract based on religious rules), but the disease of HIV/AIDS is categorized into *HIV/AIDS Nikah* (The HIV/AIDS of marriage). It may cancel the marriage. In connection with the pregnant woman which is infected the disease of HIV/AIDS, whether it must be aborted or not, there are two opinions that are proposed by *Ulama'* (Moslem scholars). First, it must be aborted to take the infant salvation care (*Pondok Pesantren al-Khoziny: t.th: 98-99*).

Another discussion of issue (*Bahsul Masa'il*) conducted by *Pesantren Ploso* in which the results are published on the book *Tuhfatur Rohibah* volume 1-5 and *In Fail: Kajian Fiqh Factual* (*In Fail: The Discussion of Factual Fiqh*). Some issues which are discussed such as: the issue of early ejaculation, the woman circumcision, *Nikah Sirri* (The hidden marriage), the method of calculating pregnancy age, *Kawin Lari* (The marriage without permission of parents), oral sexual activity, an activity of swallowing sperm and other issues. On the discussion of the woman circumcision, it is established that the woman circumcision is *Wajib* (Something that should be done based on the Islamic laws or rules), but the way to keep the woman circumcision is *Sunnah* (Something that the avoidance of which is not sinful, but the performance of which yields merit). It means that it does not need to know by the public (*Pondok Pesantren Al-Falah*: t.th; 33). Meanwhile, in relating to the law of oral sexual activity and an activity of swallowing sperm, the discussion of issue (*Bahsul Masa'il*) finally decides that:

> "The sexual relationship by doing the variation (69 variety) does not oppose with the verse of *Al-Mu'minun* verse 5-7 and *Al-An'am* verse 55, and according to the book *Fathul Mu'in*, it is allowed. If the variety eventually makes swallowing sperm occurs, so the law is *Khilaf* (Dissenting opinions). According to the well-known and reliable opinions, the law is *Haram* (Prohibited or forbidden), while according to Syaikh Abi Zaid Al-Marwazy's opinion, the law is (allowed, neutral, neither forbidden nor required)."

The discussion of issue (*Bahsul Masa'il*) is also done at *Pondok Pesantren Hidayatul Mubtadi'in* to respond the new social dynamics which is then published on the book *Masa'il Ummah* (The discussion of public issues), *Kompilasi Hukum Peristiwa Kekinian: Dari Lirboyo untuk Rakyat* (Compilation of Laws of the Recent Events: From Lirboyo for Common People). The discussion in it covers some

issues such as: the marriage scandal, the domestic duty of a wife, the Caesarean operation, marriage without *Wali* (A male relative legally responsible for a bride, usually a father) and *Saksi* (A witness of a marriage) and other issues. In discussing *Nikah Sirri* (The hidden marriage), it is based on two dissenting opinions. The first opinion is according to Syafi'iyah and Hanafiyah opinions which state that *Nikah Sirri* (The hidden marriage) is a marriage which is conducted without the presence of *Saksi* (A witness of a marriage). The second opinion is according to Malikiyah opinions which state that is a marriage which is hidden or made secret from the bride, family or society in which it is done by the basis of demand of marriage witness. The law of *Nikah Sirri* (The hidden marriage) is absolutely illegal (*Pondok Pesantren Hidayatul Mubtadi'in*: t.th: 75).

K.H. M. Syafi'i Hadzami on the book *Tentang 100 Masalah Agama* (About 100 Religious Matters) also discusses about the sexuality issue which is observed from many aspects. One of the issues discussed is about the sexual orientation of *Banci* or *Khuntsa*. *Khuntsa* means transvestite homosexuality, *Musykil* means that it is hard to identify whether he is a man or she is a woman. So, what *Khuntsa Musykil* means is a human being who has two genitals, the female genital and the male genital. The law of marriage of *Banci* or *Khuntsa* according to M. Syafi'i Hadzami is absolutely illegal, either as a bridegroom or a bride because the requirement to be a bridegroom or a bride is not the person who has two genitals although it is clear the manliness and the womanhood by tending to a certain deed. In this case, what becomes the reason is not the *Kemusykilan* (The impossibility to identify whether he is a man or she is a woman) but the two genitals that are owned. It is based on the book *Hasyiyah Bajuri* volume II page 100 and 101 which states that: "…And it is required for the circumstance of a bridegroom to be sure on the manliness. So it is illegal the marriage of a *Banci* or *Khuntsa* although it is clear the manliness…. And it is required

for the circumstance of a bride to be sure on the womanhood. So it is illegal the marriage of a *Banci* or *Khuntsa* although it is clear the womanhood (Hadzami, 1971: 213-216)."

F. Sexuality of *Fiqh* Discourse on The Indonesian Islamic Book Edition

The discussion of sexuality which uses the Indonesian language undo the escalation because there are so many books discuss the woman issue, the sexuality and the right of reproduction. According to John Meuleman (on Natsir: 175-206), there are 56 books which discuss the woman position. From the books, eventually it can be concluded that the ideas which are contained on the book are derived from a stereotype vision in terms of Islamic women such as: the abstract ideas, the general ideas, and the static ideas. The similar research is also conducted Musdah Mulia towards 100 religious books about the women to express that the 82 percentage of the books suggest that the Islamic views which drift off gender values and patriarchy values, and only 18 percentage of the books which describe the views of the sensitive gender. One of the primary themes which is discussed on the books is the issue of marriage, the issue of the household life, the issue of *Aurat* (The absolute genitals of women), and the issue of *Jilbab* (Female headgear that exposes face but not ears, hair, or neck) (Mulia: 2000).

However, some books which are published in the end of 1999 have appeared clearly the tendency towards the issue of sexuality and the right of reproduction. Some books published by *Lembaga Kajian Agama Dan Gender*/LKAJ (The Institution of Learning Religion and Gender) of The Ministry of Religion , *Yayasan Kesejahteraan Fatayat* (The Foundation of *Fatayat* Welfare), *Rahima Jakarta, Lembaga Kajian Islam dan Social* (The Institution of Learning Islamic and Social Issues) and same Pusat Studi Wanita (PSW) at Islamic University have appeared the sensitivity of gender

justice and the transformative-contextual discussion of the issue of sexuality and the right reproduction.

The discussion of the books has definitely been based on the justice perspective when discussing the issue of sexuality and the right of reproduction from the Islamic perspectives. The books have made dialog between the normative texts and the contextual texts progressively and leave the trap of textual comprehension by proposing alternative understanding which is contextual-transformative towards the issue of sexuality and the right of reproduction to reach the benefits for people, either men or women balancedly (*Li tahqiq masholih al-ibad*).

UNIVERSITAS ISLAM NEGERI

SUNAN KALIJOGO

YOGYAKARTA – INDONESIA

CHAPTER

III

The Typology of Pesantren's Thoughts at Java

A. Initial Islam and the Influence towards *Pesantren's* Thoughts

Tracing the history of thought and the Islamic law legislation in Indonesia and the reform dynamics means that it must be begun from the arrival of Islam for the initial years in Indonesia[8] until the appearance of Islamic movement on the twentieth century. By observing the historical aspects, it can be understood that the background of the reform appearance and put differences of great

8 There are three great theories about the arrival of Islam in Indonesia. First, Islam came to Indonesia on century of I H/VII M directly from Arabian (Hadramaut) to the shore of Aceh. The theory is supported by Naquib Al-Attas, HAMKA, A. Hasyimi, M. Yunus Jamil and the number of foreign historians, such as Nieman, DE. Holander, and Keyzer. Second, the theory which states that Islam came to Indonesia was derived from India continent, not from Arabian and Persia which was related to the Malabar region and Gujarat region. The theory was proposed by the Holand scholars, such as Pijnappel and G.W.J. Drewes which was then developed by Snouck Hurgronje. Third, the theory which stated that Islam came to Indonesia from Bengali (Bangladesh) because most of the famous figures in Pasai were people from Bengali or their descendents. To know more about the argumentations, look at Azyumardi Azra, *Islam di Asia Tenggara, Pengantar Pemikiran,* on Azyumardi Azra (Ed.), *Perspective Islam Asia Tenggara* (Jakarta: YOI, 1989) page xi-xii and the book *Jaringan Ulama' Timur Tengah dan Kepulauan Nusantara Abad XVIII dan XVIII* (Bandung: Mizan, 1994) page 24-36, M. Atho' Mudzhar, *Fatwa-Fatwa Majlis Ulama' Indonesia* (Jakarta: INISA, 1993), page 12, Alwi Shihab, *Islam Sufistik* (Bandung: Mizan, 2001) page 8-12, *Ahmad Masyur Suryanegara*, *Menemukan Sejarah; Wacana Pergerakan Islam di Indonesia* (Bandung: Mizan, 1998) page 73-94.

religious thoughts between Islamic organizations and Islamic institutions as the form of dynamical responses towards the existing reality particularly the social, cultural, and religious reality.

Islam which comes to Indonesia in the initial years constitutes Islam which the dissemination is dominated by *Kaum Sufi* (The Moslem scholars who surrender their life on the ways of Allah SWT or Islamic teachings and guidance than surrendering their life on the profane life. On the age of initial Islamic development, they are recognized of wearing the wool clothes as the symbol of simplicity). It can be comprehended because at the initial years of the Islam development goes on along with the Sufism movement which has centre at the Middle East. On one side, the construction of Indonesian cultures, at that time, has mystical characters as the result of the long interaction with Animism belief, Dynamism belief, and Hinduism belief. On the social stratification of Indonesian society, Islam comes and faces with two stratifications of social classes. They are *Golongan Priyayi* and *Masyarakat Wong Cilik* or *Akar Rumput*. *Golongan Priyayi* is identical with the literary-cultural stratification of *Hindu Kejawen* which is relatively cultured, delicate, and sensitive. *Masyarakat Wong Cilik* or *Masyarakat Akar Rumput* is identical with the illiterate-cultural stratification which is still tied strictly with Animism-Dynamism tradition or culture. The culture can be observed from the tradition f birth ceremony, the marriage ceremony, the death ceremony, and other traditional ceremonies[9]. The dialog or touch of two cultural traditions appears Islam with sufistical-sincretical characteristics. Islam and the local

9 Look at Simuh, *Unsur Sufisme Dalam Sastra Jawa Mutakhir*, BASIS Nomor 07-08, 50th Year 50, July –August 2001, page 60-63 and Mohammad Damami, *Islam dan Konteks Kejawen*, BASIS Nomor 07-08, 50th Year July-August 2001, page 64-68. To know the Islamic and Javanese cultures can be seen on some writings such as Karkono K. Partokusumo, *Keilmuan Jawa dalam Kaitannya Dengan Agama Islam*, part 1-3 on *Magazine Mawas Diri*, October and November 1986 and *Pengaruh Islam dalam Sastra Jawa,* part 1-2 on *Magazine Mawas Diri* July and August 1986, Simuh, *Aspek Mistik Islam Kejawen* dalam Wiris Hidayat Jati, part 1-3, on *Magazine Mawas Diri* September, October, and December, 1988.

culture involve in the dialogical or dialectical process, contestation, and negotiation which consistently undergo a process for a long time. One of the dialectical results is the appearance of a new religious sect which is recently called *Aliran Mistik Islam Kejawen* (the religious sect of mystique of Javanese Islam).

At this stage, the tradition of Sufism is still relatively loose. In a sense, it has not been known the term *Mu'tabaro* and *Ghoiru Mu'tabaroh* because the *Fiqh* domination or study of *Fiqh* (Study of laws pertaining to ritual obligations) relatively has not existed and the discourse of *Fiqh* is still marginalized. On the development, in line with the development of *Fiqh* discourse which is signaled by the founding of *Demak* Kingdom in centre Java, it starts to appear the contestation of *Fiqh* discourse. The case of Syaikh Siti Jenar can be understood as the real conflict of *Fiqh* discourse. It is about a Sufism religious sect which faced with the *Fiqh* logic.

On the next development, the Sufism starts to organize and form an organization and a certain community in concord with each *Thoriqoh* (A religious path for mystics to follow, particularly *Sufism*) such as: *Thoriqoh Qodariyah*, *Thoriqoh Naqsabandiyah*, *Thoriqoh Syatariyah*, and *Thoriqoh Rifa'iyah* which generally develop speedily, particularly in Java. The next development of *Thoriqoh*, becomes more speedy until the recent years. Some *Pondok Pesantren* still become the center of *Thoriqoh* such as: Pondok Pesantren An-Nawawi Berjan which is guarded by K.H. Chalwani Nawawi, Pondok Pesantren Darussalam, Watucongol, Muntilan which is guarded by K.H. Ahmad Abdul Haq, Pondok Pesantren Futuhiyah Mranggen Demak which is guarded by K.H. Luthfi Hakim and K.H. Hanif Muslich, and Pondok Pesantren Kyai Parak Temanggung which is guarded K.H. Muhaimin Gunardo.

If it is traced on the globally context, the other sides of the Islamic world, beside Sufism which accompanies the development

of Islam in Indonesia, is the world of Islam which is on the anti-climax phase of civilization history. It can be studied from the thirteenth century which is considered by the Islamic historical experts as the beginning age of Islamic decline, either from the political side (which is signaled by the success of Hulagu Khan's aggression in conquering the center of Islamic civilization in 1258) or from the global civilization. The disadvantageous condition, according to the observers of Islamic history, go on to the nineteenth century, it is since the appearance of *Tokoh-tokoh Pembaharu* (the reform figures of Islam) as it has been explained at the previous sub-chapter.

One of the crucial matters which become a signal of the stagnancy of Islamic intellectual development is the statement that any effort of *Ijtihad* has been closed or stopped. *Ijtihad* can be meant as an individual interpretation and judgment conducted by experts of *Fiqh* in establishing a fixed law of a certain matter based on the Islamic teachings. The situation of intellectual stagnancy and the condition of *Taqlid* cultures among society have appeared relatively negative influences towards the development of intellectual movement in Indonesia. *Taqlid* is unquestioning acceptance of traditional religious interpretation. This reality definitely causes Islam adherents in Indonesia become lack of having momentum and capability to reliantly develop in any aspects including the intellectual development towards Islamic laws (Fuad, 2005: 31-32).

The stagnancy of Islamic intellectuality can be observed from the intellectual history of Islamic laws which develop after the age. The intellectuality of Islamic laws of the seventeenth and eighteenth century is on the balance of *Tasawwuf* law (Mysticism of *Sufist* religious sect) and *Fiqh* law. Law establishments only constitute annotation of the law establishments which are implemented by the classical *Ulama'* (Moslem classical religious leaders) in any form such as: *Ta'liq* (Comments as the additional

note), *Syarh* (Explanation), and *Ikhtisar* (Summary) although there are some ulama' who have developed uniue and typical nuance sauch as: Hamzah Fansuri, Nuruddin Ar-Raniri, Syamsuddin As-Sumantrani, Abdurrauf As-Singkili, Muhammad Arsyad Al-Banjari, Abdul Malik Bin Abdullah Trengganu, and Muhammad Zain Bin Faqih Jalaluddin. They establish a certain law which is based on the *Fiqh* law of *Qouly* establishment (textual law) and *Manhaji* establishment (methodological law) in concord with *Madzhab Syafi'i* (school of scientific discipline based on *Syafiite* persuasion) (Fuad, 2005: 35-44).

In the meantime, it was exactly started in 1511 when Portuguese defeated Malaka. At that time, there was a new social context which accompanied the development of Islamic intellectuality. The new social context was the colonialism and imperialism that penetrated to Indonesia. The colonialism and imperialism had triggered a kind of a radicalization of religious intellectuality so it happened a circular movement of orthodoxy and orthodox practice. A new phase had been started when the Islamic intellectuality was also moved by the strongly social dynamics. Lot of historical sources stated that the resistant center towards the colonialism and imperialism mostly derived from the community of *Santri Pesantren* (Students of *Pondok Pesantren* who learnt religious knowledge and stayed at the traditional Moslem boarding schools).

Before the colonialism and imperialism, particularly Dutch built official schools, there were some matters that needed to be noticed to explain about the phase of Islamic intellectuality. The crucial phase was phase when the *Pesantren* community gradually had made the pilgrimage to Mecca. The event could not be seen as the common religious phenomenon because the new construction of intellectuality at *Pesantren* was exactly formed through this yearly process. As it was known, some the *Pesantren* community did not come back to Indonesia after they did the pilgrimage, but

most of them stayed living in Mecca for a certain time to deeply learn the Islamic knowledge.

The process of learning definitely afforded the new touch in the construction of Islamic intellectuality at *Pesantren*. This phase could generally be divided into two phases. The first phase was the phase when the reformation of *Wahabi* Islamic intellectuality had not happened. At this phase, there was no significant difference with the movement of Islamic intellectuality with the previous phase, the phase before the movement of *Wahabi* Islamic intellectuality appeared. The second phases was the phase when the reformation of *Wahabi* Islamic intellectuality had happened and *Wahabi* Islamic intellectuality became the mainstream of Islamic intellectuality in Mecca. The two phases, in turn, eventually appeared two typologies of *Pesantren* intellectuality which had different variety and also had different variety of each variety. The two constructions of Islamic intellectuality which appeared from the two phases, so far, keep developing in the middle of society.

Ulama'-Ulama' Pesantren (classical religious leaders of the Moslem boarding schools) in the nineteenth century is the result of the intellectual touch of the first phase of Islamic intellectuality. Some of *Ulama'* are Ahmad Rifa'i Kalisasakh, Syaikh Nawawi Al-Bantani, Muhammad Salih Ibnu Umar atau Kyai Sholeh Darat, Syaikh Mahfudz Abdullah At-Tirmisy, K.H. Hasyim Asy'ari, Syaikh Abdurrahman Assegaf, Abdul Hamid Hakim, Mahmud Yunus, and others. In this century, there was a movement of the center of Islamic intellectuality from outside Java (Sumatra and Kalimantan) which entered to Java in which the balance of *Syari'ah* (Islamic law) and *Tasawwuf* (Mysticism of *Sufist* religious sect) was the basic characteristics of *Ulama'* of the century. (Fuad, 2005: 44-48).

In Indonesia, in the same century, the *Ethical Policy* started to be prevailed. The policy appeared a new context which influenced

the new development of *Pesantren* Islamic intellectuality. The Ethical Policy enabled some of Indonesian community accessed *General Knowledge* (The restrictive term used to differ the religious knowledge and the general knowledge). When *Muhammadiyah* (The second biggest religious-social organization in Indonesia) incessantly built schools, the dialog between the religious knowledge and the general knowledge became so intensely. What was meant by the general knowledge is a scientific knowledge which was taught at the general schools such as: mathematics, economy, physics, history, sociology, and other knowledge. It was the root of Islamic modernity in Indonesia beside the transformation of *Wahabi's* thought via Muhammad Abduh and Rasyid ridho. However, the development of the general knowledge in Western countries did not only have the liberal and modern characteristics, but also have the socialistic characteristics, so the knowledge also had absolutely strict influenced with the form of a new variety of Islamic thought in Indonesia. It simply could be stated that it was the beginning of the appearance of *Islam Kiri* (Islam which tends to secularism) in Indonesia. *Islam Kiri* in Indonesia underwent a revitalization on the age of new era under Soeharto's government.

At the phase of *Pasca Kemerdekaan* (Post-freedom of Indonesia) or entering the twentieth century happened an new evolution of the construction of *Pesantren's* thought. The reformation of Islamic thought which was rolled on by *Wahabi* movement, in Indonesia was developed by *Muhammadiyah* community. At first, the rivality of thought of *Muhammadiyah* community with *Pesantren* community which was genealogically related with the Mecca intellectualism of *Pre-Wahabism* movement happened intensely and tightly. The rivality went on in the course of long time.

In the meantime, a new variety which was genealogically had the same source appeared, namely Syaikh Muhammad Bin Abdul

Wahab. The variety, in turn was known as *Gerakan Salafiyah* which is much different with the modernity movement. *Gerakan Salafiyah* is the return movement towards *Al qur'an* and *Hadis*. (*Al qur'an* can be meant as the sacred book of the Moslem which is written in Arabic language and contains the Commandment of Allah SWT as revealed to the prophet Muhammad. *Hadis* can be meant collection of stories relating to deeds and words of *Muhammad*). *Gerakan Salafiyah* tried to spread the teachings of *Ahlussunnah Wal Jama'ah*. One of the prominent thought of *Ahlussunnah Wal Jama'ah* movement is a glorification of the past which is usually called *As-Salafus Sholeh*. The damage and the deterioration of Islam society, according to the perspective of *Ahlussunnah Wal Jama'ah* movement, are caused by the Islam community that does not follow the models of Prophet Muhammad SAW. Hence, on their movement they sustainably imagine the social life as the social life when Prophet Muhammad SAW was still alive and the era of *Khulafaur Rosyidin* (The governmental era after the death of Prophet Muhammad SAW which refers to four great Islamic leaders such as: Abu Bakar Ash-Siddiq, Umar Bin Khattab, Usman Bin Affan, and Ali Bin Abi Tholib).

Meanwhile, Islamic leaders' thought of *Pesantren* which follows K.H. Hasyim Asy'ari as the main reference does not undergo any meaningful change. Their thoughts are dominated by *Fiqh* laws and textual-thought models. It can be clearly seen from *Bahsul Masa'il* forums (Forums of discussing social problems in which the fixed law of them has not been found at *Al qur'an* or *Hadis*) which are signaled by the obedience towards classical texts written by *Ulama'- Ulama'Kuno*. *Bahsul Masa'il* which is held either at *Pondok Pesantren-Pondok Pesantren* or official institutions such as: *Nahdhotul Ulama'* has the same construction of thought. The important thing that must be underlined is the tradition of different thought or view which is absolutely heterogeneous in

Fiqh discipline and influential to form the pattern of thought in facing the variety of thought. Later, it is a kind of cultural roots which are definitely familiar for the world of *Pondok Pesantren* and the social and cultural pluralisms. It also forms the *Pondok Pesantren* inclusiveness.

In line with the development of New Era, *Pondok Pesantren* community underwent the social process which was the same as what the Modern community underwent. The social process was shown when *Pondok Pesantren* community started to hold the formal education. It was signaled by *Pondok Pesantren* community which built formal schools by holding formal education. One of the examples of it was the building of the formal schools which was initiated by K.H. Wahid Hasyim at *Pondok Pesantren* Tebu Ireng Jombang, East Java.

The results of the process are the appearance of deconstruction process of religious thought. The shift is signaled by the existence of *Taqlid Qouly* (An unquestioning acceptance of traditional religious interpretation which is conducted textually) into *Taqlid Manhajy* (An unquestioning acceptance of traditional religious interpretation which is conducted methodologically) in the field of *Fiqh*, and the meaning of *Ahlussunnah Wal Jama'ah* concept as *Manhajul Fikr* (Methods of thinking) in the field of *Aqidah* (Strong and complete religious belief). On *Pondok Pesantren* community in which most of *Santri* undergo education at *Pondok Pesantren*, the reformation of thought still happened in certain boundaries. It definitely differs from *Santri* community who continue their education into *Perguruan Tinggi Agama Islam* (Institutes of Islamic studies) or other Islamic Universities.

The introduction with social knowledge yields minimally two models of new Islamic thought at *Pondok Pesantren*. The first model is the model of critical-deconstructive thought. It is based

on theories of Muhammad Arkoen, Naser Hamid, Muhammad Abed Al-Jabiri, and other Moslem intellectuals. The core point is the deconstruction of texts which conducted radically and almost without considering roots of traditional intellectuals or thoughts. The second model is the result of touch or combination between classical texts and texts of critically-social knowledge which, in turn, yields critical Islam and transformative Islam. In another side, if it is looked institutionally, there is a kind of institutionalization of laws by the appearance of Islam Kingdoms. The Islam Kingdoms are built by *Mufti* or *Qodhi* (Law institutions) such as: Kingdom of Samudra Pasai, Kingdom of Demak Bintoro, Kingdom of Banjar, Kingdom of Mataram, Kingdom of Tuban and the appearance of *Mahkamah Syari'ah* (Official law institutions which are formed by the government or Kingdom) in Java and Madura. It proves that Islamic laws are obtained at some Islamic kingdoms. It can be proved by the usage of *Gelar* (Kingdom title or degree) which is attributed by a King such as: *Adipati Ing Alogo Sayyidin Panotogomo Kholifatullah Fil Ard* and the resistant conducted by the Kings to reinforce the Islamic laws as it had been done by Pangeran Diponegoro, Raden Patah, Sultan Agung, Fatahillah, and other Kings. It means that there has become the shift of laws and ethical models which are developed by Hindu or Budha Kingdoms into Islamic Kingdoms by becoming Islamic laws as the formal or positive laws which obtain for the whole Kingdoms. In other words, the Islamic laws have become the positive laws at the Islamic Kingdoms in Indonesia. It means that there is a formalization phase of *Syari'ah* (The Islamic laws which are prevailed formally/officially) on the history of laws in Indonesia. It is almost impossible, as written by Agus Sunyoto, that the formalization phase is not based on the formal power of Islamic Kingdom.

The existence of positive laws of Islam, at first, gains admission from Dutch government. It is in concord with *Receptio in Complexu*

theory, but there is then a statement that the positive laws of Islam can only be admitted on traditional laws through the *Receptio in Complexu* theory (Ka'bah, 1999: 73-74, and Fuad, 2005: 51-56). The process of struggle of formalization of Islamic law stays continuing on discussion about the national laws in which Islam is one of the basic forms[10]. The relationship of the national laws and the Islamic laws can be seen on Constitution No. 1 1974 about marriage, Constitution No. 7 1989 about Religious Court and some articles related to *Wakaf* (Property donated for religious or community use) on Constitution No. 5 1960 about Primary Establishment of Agrarian Matters, Constitution No. 7 1992 about Banking, and other establishments of Constitution.

Another appearing phenomenon is the existence of *The Living Law*. It is the law that is practiced directly by society and can be found at the daily life of society. It can be proved through joining process or combination between Islamic laws and traditional laws in certain regions such as: Aceh, South Sulawesi, Riau, Minangkabau, Padang, and other regions in which the Islamic laws can be received as the same level as the traditional laws and the local tradition of ancestors. The acceptance of the Islamic laws as the same level as the traditional laws can be seen from the saying that states *Adat Bersendi Syara', Syara' Bersendi Kitabullah, and Syara' Mengata, Adat Memakai*. The saying shows that there is a strongly relationship between the Islamic law and the traditional law (Fuad, 2005: 49, Ka'bah, 1999: 75-7, and Azizy, 2004: 153-162). *The Living Law* keeps having evolution process until the recent time. Even, it can be stated that *the Living Law* becomes *Roh Hidup* (The soul of life) to manage rules of social Moslem life in Indonesia. Muhammad 'Abid Al-Jabiri and Muhammad Syahrur state that civilization

10 M. Daud Ali as quoted by Rifyal Ka'bah (1999: 75-76) states that recently in Indonesia prevails four systems of great laws which are still live and develop namely: the traditional laws, Islamic laws, the Western-constitutional laws and *common laws*.

which is developed by the Moslem adherents is *Fiqh* civilization (*Al-Hadhoroh Al-Fiqhiyyah*) (). In line with the application of Islamic laws and traditional laws in Indonesia, Nurcholis Madjid (2000) also states that the Islamic laws are one of the knowledge that dominates comprehension and the way of thinking of Islamic adherents. Practically, it can be said that everyone will always tend to ask *Apa Hukumnya?* (What is the law?) rather than they ask *Apa Hikmahnya?* (What is the advantage?), *Bagaimana Pemahaman Filosofisnya?* (What is the philosophical backgrounds), and other crucial questions.

B. Normative Year and Development of Java's *Pesantren*

Pondok Pesantren is an educative institution which is *indigenous* in Indonesia and it has had strongly roots in the middle of society. *Indigenous* means either the education concept, the building shapes, or the locations of *Pondok Pesantren* have absolutely unique characteristics. *Pondok Pesantren* has strongly cultural roots before the dissemination of Islam. The essence of *Pondok Pesantren* which is different and typical is previously based on the institution of Hinduism education gradually turns to the educative institution which is based on the Islamic teachings. *Pondok Pesantren* is considered as a continuation of the *Mandala* educative institution of Hindu age (Mustopo, 2001: 150). The *Mandala* educative institution is a particular dormitory of *Pertapa* (Hermit) or students of *Siwa-Hindu* religion which is located at the middle of forest and usually led by *Dewa Guru* (Guardian of the *Mandala* educative institution). The *Mandala* educative institution, in the course of time, in line with the arrival of Islam, is then known (in term of Islam) as *Pondok Pesantren*. Etymologically, the term *Pondok Pesantren* comes from the word of *Funduq* which means *Asrama* (Dormitory where the persons studying the religious knowledge live), and *Shastri* which means persons who well know and master content of holy books of

Hindu teachings. So, according to Islamic sense, *Pondok Pesantren* means a particular dormitory of people who know and master well content of holy books of Islamic teachings (Sayono, 2001, Nasir, 2005: 80, Noer, 2001: 89). In other words, *Pondok Pesantren* means a religious institution which becomes a centre of education, teaching, development of Islamic knowledge and Islamic society.

Zamakhsyari Dhofier, a research pioneer of *Pondok Pesantren* in Indonesia, states that *Pesantren* derives from the word *Santri* which is given prefix "*Pe*" and affix "*An*" which can be meant as a place where *Santri* stay or lives in. Furthermore, Zamakhsyari Dhofier, quotes Professor John's opinion, states that the term *Santri* derives from Tamil language which means *Guru Ngaji* (A person who teaches the religious knowledge becomes the main reference of religious knowledge). While, according to C.C. Breg, the word *Santri* derives from the word of *Shastri* which in India language means a person who knows content of holy books of Hindu religion. The words of *Shastri* derives from the word of *Shastra* which means holy books, religious books or books related to knowledge (Dhofier, 1994: 18).

According to Mujammil Qomari, there are minimally seven theories which explain the originality of the word of *Pesantren* in Indonesia. The first theory states that *Pondok Pesantren* is a imitative model or adaptation from the educative institution of Hindu and Budha before Islam came to Indonesia. The second theory states that *Pondok Pesantren* derives from India. The third theory states that the model of *Pondok Pesantren* is the first time found in Baghdad. The fourth theory states that *Pondok Pesantren* derives from the combination of Hindu and Budha religion (Pre-moslem in Indonesia) and India. The fifth theory expresses that *Pondok Pesantren* derives from the cultures of Hindu-Budha and Arabic culture. The sixth theory confirms that *Pondok Pesantren* derives from India and Moslem people in Indonesia. The seventh theory

states that *Pondok Pesantren* derives from India, Middle-East and the older local tradition (Qomar, t. th: 10).

Historically, *Pondok Pesantren* is a social institution which becomes the first and primary pillar of *Dakwah* (Religious proselytizing or missionary endeavor) in conducting the dissemination of Islam and regeneration of Islamic leaders. *Pondok Pesantren* can replace the domination of religion roles and Hindu-Budha cultures about the fifteenth century. On the next development, the roles of *Pondok Pesantren* are not only on the educative context, but also on the space of political context, the center of exchanging information, and the center of coordination of *Para Wali* (The religious leaders of Islam who are considered the disseminators of Islam in Indonesia) in Java. *Pondok Pesantren* in Java at the beginning of its founding often faces with the habit of local society which is relatively closed with immoral acts such as: gambling, fighting cock, engaging sexual affairs, and doing drunk. Generally, the historical background of *Pondok Pesantren*'s founding is started by the condition of social-religious-cultural life which reflects the old values which are against with the Islamic values.

Historians propose different opinions about who has initiated the founding of *Pondok Pesantren* at the initial years. Some historians mention Syaikh Maulana Malik Ibrahim or Syaikh Maghribi from Gujarat, India the initial founder of *Pondok Pesantren* in Java. Some historians, like Muhammad Said and Junimar Affan, mention Sunan Ampel or Raden Rahmat the initial founder of *Pondok Pesantren* in Kembang Kuning, Surabaya. K.H. Machrus Aly notifies that besides Sunan Ampel (Raden Rahmat) Surabaya, there are some *Ulama'* who consider Sunan Gunung Jati (Syarif Hidayatullah) in Cirebon the first founder of *Pondok Pesantren* when he exiled with his adherents to go into *Kholwat* (Solitude or retirement from the world with the intention of devoting religious service consistently to *Taqorrub* or approach towards Allah SWT) (Qomar, t.th: 8).

According to analysis of Lembaga Research Islam Pesantren Luhur (Islamic Research Institution of Pesantren Luhur) states that Syaikh Maulana Malik Ibrahim or Syaikh Maghribi is establiseh as *Peletak Sendi-Sendi Pesantren* (The founder of basic principles of *Pesantren*), and Sunan Ampel (Raden Rahmat) is stated as *Wali Pembina Pesantren Pertama* (The first religious leader or Guardian of Moslem boarding schools) in East Java. Meanwhile, Sunan Gunung Jati (Syarif Hidayatullah) founded *Pondok Pesantren* after Sunan Ampel (Raden Rahmat). They do clearly not found *Pondok Pesantren* in the same time. The theory of the death of two *Ulama'* (Two religious leaders), Sunan Ampel (Raden Rahmat) and Sunan Gunung Jati (Syarif Hidayatullah) confirms that Sunan Ampel (Raden Rahmat) passed away in 1467, Sunan Gunung Jati (Syarif Hidayatullah) passed away in 1570. So, there is a range of time about 103 years that is considered reasonable to differ an era of struggle of a disseminator of Islam. Some *Ulama'* who mention Sunan Gunung Jati (Syarif Hidayatullah) the First Founder of *Pondok Pesantren* may be acceptable, but it is for region of Cirebon, or generally for region of West Java, not for region of entirely Java (Qomar, t.th: 9).

In the sixteenth century, the name of *Pondok Pesantren* as the educative institution of common people seemed very valuable, particularly in the field of Islamic broadcasting and religious proselytizing. Can be accepted as *Panutan* (Main model) particularly the moral model. *Pondok Pesantren* goes increasing although *Pondok Pesantren* faced with lot of hinders from Dutch and Japan. Ducth colonilezd Indonesia more than three and a half centuries not only mastering political aspect, culturalaspect, economical aspect, but also disseminating Christian religion. For Dutch, *Pondok Pesantren* is an anti-thesis of Christianization movement and the basis of national struggle to reach freedom. Because *Pondok Pesantren* are considered harmful in hindering the economical, cultural,

and political exploitations and the dissemination of Christian religion, so Dutch systematically impeded the development of *Pondok Pesantren*.

On the development of *Pondok Pesantren*, it can be found some government rules which hampered the progress and the development of *Pondok Pesantren*. Quantitatively, the government rules which hampered the development of *Pondok Pesantren* were not limited on two government rules (1905 and 1925) as stated by G.E Pijper. Other hinders of *Pondok Pesantren* were the government rules in 1882, 1905, 1925, and 1932. Beside the official rules above, Dutch also impeded the development of *Pondok Pesantren* by means of restriction of *Kitab Kuning* (Books which were written by *Ulama'* or religious leaders and generally printed by using yellow papers) which could motivated thoughts and deeds of *Santri* community. According to Fahruddin, the books included *Risalah Tauhid*, *Tafsir Al-Manar* from Syaikh Muhammad Abduh, *Tafsir Al-Jawahir* and *Alquran Wa Al-Ulum Al-Ashriyyah* from Syaikh Thantowi Jauhari, *Al-Islam* Ruh *Al-Madaniyah* and *Izhat Al-Nadsyiin* from Musthofa Al-Gholayin. The restriction of the books actually was unreasonable because the books did not contain *Kaidah-Kaidah Politik* (The political principles), but they only contained moral appeal and advise (Qomar, t.th: 12 and Zuhairin, 2004). Towards Japan, *Pondok Pesantren* also refused the obligation of doing *Saikere*. The resistant was pioneered by K.H. Hasyim Asy'ari, ad it then was followed by *Ulama'* or *Kyai* (Moslem classical religious leaders) of other *Pondok Pesantren*. Consequently, *Ulama'* or *Kyai* including K.H. Hasyim Asy'ari were arrested and jailed by Japan (Qomar, t.th: 13).

On the Freedom Era, *Pondok Pesantren* underwent a new nuance in responding an new education system which developed more freely, liberally, and democratically. The new nuance was the appearance of freedom in determining the new education system which never had been undergone because of Colonizers' political

pressure. *Pondok Pesantren* in Indonesia grew and developed relatively speedy. In 1942, there were 1.871 *Pondok Pesantren* in Java-Madura, in 1977 there were 4.195 *Pondok Pesantren*, and it is estimated in 2007 there will be 14.000 *Pondok Pesantren* in Indonesia.

On the first phase of Freedom, Indonesian history noted that there was a cultural and monumental polemic. There appeared two contrastive opinions of the national cultural polemic. On one side, there were figure like Dr. Soetomo and Ki Hajar Dewantoro. They proposed a view that National Education System of Indonesia had to refer to the educative system of *Pondok Pesantren* which had deeply historical and cultural roots among Indonesian society. On another side,tere was a view that wished National Education System of Indonesia adopted and imitated the Education System of Western countries. This writing does not intend to research the construction of each argument, yet this writing intends to underline the influence of the National Education among the figures of movement and the figures of national freedom. On the next development, the National Education System refers more to School Systems or model (the Education System of Western countries) rather than the Education System or model of *Pondok Pesantren*.

Process of the Formal Education in the form of *Sekolah* (State education institutions) and *Madrasah* (Domestic and religious education institutions) which is activated by government develop widely, in line with advantages and disadvantages of *Sekolah* (State education institutions) and *Madrasah* (Domestic and religious education institutions). So is the world of *Pondok Pesantren* education with its advantages and disadvantages. The goals or intention of each right (*Pesantren*, *Sekolah*, and *Madrasah*) in participating of developing Indonesian citizen could be bridged well. Education shackles on the colonial era could be dismantled after the Proclamation of Indonesia as the confirmation of

Independence Day on Agustus 17, 1945. However, the appearance of the education model of *Sekolah* and *Madrasah* which is activated and moved by Government through Departement of National Education (*Departemen Pendidikan Nasional*)and Departement of religion (*Departemen Agama*) has triggered and created a discrete encounter for the world of *Pondok Pesantren*. It is caused minimally by three main factors. First, the anti-colonial ideology among *Pondok Pesantren* community is still relatively strong or influential, so that some *Pondok Pesantren* community still assume the education system of *the School Model* or *the General Education* is a part of colonial education or colonial influence. Second, the existence of narrow view or comprehension from some *Pondok Pesantren* which consider the primary obligation of *Pondok Pesantren* is holding the religious or Islamic education/teaching, while the obligation of holding School Model or General Education is State or Government's primary responsibility. It is also accompanied by anxiety that if *Pondok Pesantren* holds a formal education, it will shift the primary function of *Pondok Pesantren* as the center of religious and Islamic education. Third, it needs to admit that *Pondok Pesantren* actually does not have reliable preparations, particularly educative infrastructures to hold a model of general or school education.

As a result, the society is still doubtful and does not surely choose *Pondok Pesantren* as the educative institution for their children. Even, most of them prefer entering their children to State or General Education Institution to sending their children to *Pondok Pesantren*. The real implication of the situation is absolutely easy to be guessed. Many small *Pondok Pesantren* underwent vacuum circumstances, even closed their religious educative institution. The climax of the circumstance happened on 1950s. It was only big or well-known *Pondok Pesantren* could survive and keep continuing the educative process.

If it observes the society's opinions and responses, *Pondok Pesantren* which can succeed of defending the educative process can be divided into two kinds of *Pondok Pesantren*. The first kind is *Pondok Pesantren* which adjusts with the National Education System. The form of adjustment is in variety such as: transforming the education system formally, holding the formal education separatedly and staying defending the old system of *Pondok Pesantren* tradition or adding the education curriculum by conducting the foreign language course, conducting skill training, and the addition of other curriculums. *Pondok Pesantren* Tebu Ireng, *Pondok Pesantren* Darul Ulum, *Pondok Pesantren* Bahrul Ulum, *Pondok Pesantren* Krapyak, and recently *Pondok Pesantren* Lirboyo, Kediri are some *Pondok Pesantren* in Indonesia which apply for the strategy of adding education curriculums to anticipate the social modernization and development. The second kind is *Pondok Pesantren* which stays firmly holding the old system of *Pondok Pesantren*. *Pondok Pesantren* does not adjust with the National Education System or does not hold the general or formal education. *Pondok Pesantren* keeps staying on holding the classical education system such as: the learning system of *Bandongan* (*Kyai* reads the books and *Santri* listen) and *Sorogan* (*Santri* reads the books, *Kyai* listen and corrects if it is found ant mistake). Some *Pondok Pesantren* apply for extremely rigid and strict disciplines by not permitting *Santri* of *Pondok Pesantren* who *Mondok* (Stay and live in *Pondok Pesantren*) to have the Formal Schools outside *Pondok Pesantren*. Pondok Pesantren Asrama Perguruan Islam/API (Islamic college boarding school) in Tegalrejo is the example of *Pondok Pesantren* in such a model. Basically, the two kinds of *Pondok Pesantren* have extremely significant role of growing and regenerating *Pondok Pesantren* which ever undergo the vacuum circumstances. The main intention is making the education of *Pondok Pesantren* becomes *Mainstay* of traditional Islamic education. In other

words, *Pondok Pesantren* as the main center of traditional Islamic education can be recovered.

The phenomenon is actually interesting to be paid close attention. It is about the capability of *Pondok Pesantren* in defending the existence in the middle of change waves and modernization. The big and well-known *Pondok Pesantren* generally have been more than fifty years, however they stay existed and even they keep undergoing relatively significant development, either amounts of *Santri* or the variety of regions where *Santri* come from. The amounts of *Santri* at *Pondok Pesantren* become very significant variable because it can be used as a basic parameter to know status or the existence of a certain *Pondok Pesantren*. It is based on the amounts of *Santri*, can be classified into: *Pondok Pesantren Besar* (The big or well-known *Pondok Pesantren*), *Pondok Pesantren Sedang* (the middle *Pondok Pesantren*), and *Pondok Pesantren Kecil* (*The small Pondok Pesantren*). A certain *Pondok Pesantren* which has *Santri* more than 2.000 *Santri* is classified into the big or well-known *Pondok Pesantren*, a certain *Pondok Pesantren* which has *Santri* between 1.000-2.000 *Santri* is classified into the middle *Pondok Pesantren*, and a certain *Pondok Pesantren* which has *Santri* under 1.000 *Santri* is classified into the small *Pondok Pesantren*.

The capability of surviving of *Pondok Pesantren* clearly becomes interesting if it is compared with the similar educative institution in other countries. Abdurrahman Wahid (on Qomar, t. th: 15) proposes a reasonable comparison by stating that in the past, *Pondok Pesantren* in Indonesia successfully could respond the challenges of period. While, the systems of *Pondok Pesantren* which are at present time developed by *Kaum Sufi*, either in Malaysia or Northern Thailand is always in suffer because they are always under pressure of the education system of Western model. It means that most *Pondok Pesantren* in Indonesia have strategic steps which are taken to

restrain the pressure of secular education systems from coming Western countries.

The explanation above clearly describes that *Pondok Pesantren* does not only have ability to restrain but also in turn have ability to develop and place significant positions in the field of the education system in Indonesia. The explanation above also describes that *Pondok Pesantren*, based on the Indonesian history, undergoes some changes, growth, and development. Azyumardi Azra (on Noer, 2001: 95) mentions the changes, growth, and development of *Pondok Pesantren* as *Rural Based-Educative Institution* and then developing into *Urban Based-Educative Institution*. It seems the researchers' assumption with regard to the existence of *Pondok Pesantren* slipped or mistaken. The researchers only base on a speculative theory which states that the swiftness of modernization will take extraordinary influence towards traditional institutions including *Pondok Pesantren*. *Pondok Pesantren* will be paralyzed or deactivated because of the strong influence of modernization. Even, there was a researcher of *Pondok Pesantren* who came to Indonesia felt absolutely surprised because he at first guessed that *Pondok Pesantren* only left in ruins. Dhofier (1994: 42) writes that the secret of *Pondok Pesantren's* capability to restrain as the traditional institution of Islamic education in Java is because of *Kyai's* sensitivity in responding *Selera Masyarakat* (The demands of society towards educative needs). *Kyai* is able to play roles as *The Social Engineer* in developing *Pondok Pesantren* to be more responsive and anticipative towards the needs of modern life.

In the end of the twentieth century and the beginning of the twenty first century, there are new phenomena in terms or the development of *Pondok Pesantren*. The development s can be observed from two matters. First, the appearance of some *Pondok Pesantren* in which *Pondok Pesantren* is intentionally founded as an

effort to respond society's demands towards the global changes. Vision and mission of the educative institution at *Pondok Pesantren* are determined clearly and have orientation towards globalization demands and needs. Besides, the education process at *Pondok Pesantren* is also held modernly by focusing on physical and psychological health in balance. The education process at *Pondok Pesantren* also emphasizes on the highly care towards health and environment and grows awareness towards the importance of educative financial aspect which is great enough to get a more qualified education process. Pondok Pesantren Al-Zaitun, Pondok Pesantren Budi Mulya, and other new *Pondok Pesantren* may be taken as the example of the phenomena. Pondok Pesantren of this kind, Al-Zaitun and Budi Mulya, relatively attracts society's attention. It is proved by the amount of *Santri* which is possessed by the *Pondok Pesantren* which is more than 3.000 *Santri* and the regions where *Santri* come from, although the age of *Pondok Pesantren* is still under decade. Second, the appearance of new *Pondok Pesantren* in which *Pondok Pesantren* is founded by activists of *Salafiyah* movement. *Pondok Pesantren* has typical characteristics by emphasizing and focusing on the development of religious knowledge.

C. Typology of *Pesantren's* Thoughts in Java

Pondok Pesantren is a unique, typical, and pluralistic phenomenon. There are about 24. 000 *Pondok Pesantren* in Indonesia, from the very simple *Pondok Pesantren* (definitely simple facilities, learning-oriented, classical teaching method, no brochures or promotion) to the absolutely modern *Pondok Pesantren* (definitely modern facilities such as: computer, internet centre, website, and other facilities, standardized teachers of S-1 Degree, modern teaching methods, various brochures or promotion). It is based on the models of *Pondok Pesantren*, categorizations and typology

which are made by the researchers can not generalize or conclude that all *Pondok Pesantren* in Indonesia is the same.

According to data of EMIS which are released by Departemen Agama Republik Indonesia (Department of Religion of Indonesian Republic), the relationship between *Pondok Pesantren* and its main organization is: Nahdhotul Ulama' (69,28 %), Muhammadiyah (1,78 %), Persis (0,56 %), Washiliyah (0,85 %), PUI (0,58 %), Mathlaul (0,37 %), Al-Khoirot (0,56 %), Nahdhotul Wathon (0,85 %), DDI (0,43 %), Perti (1,17 %), GUPPI (0,42 %), LDII (0,18 %), Mandiri (14,13 %0), and other *Pondok Pesantren* (8,89 %).

Pondok Pesantren which is extremely unique, typical, and pluralistic has attracted some Moslem intellectuals to know about *Pondok Pesantren*. Some of *Pondok Pesantren* thinkers and researchers who research *Pondok Pesantren* are:

1. Prof. Dr. Zamakhsyari Dhofier, the research pioneer of *Pondok Pesantren*, on his dissertation proposes two categories of *Pondok Pesantren* namely *Salafi* and *Kholafi*. *Pondok Pesantren Salafi* is *Pondok Pesantren* which still restrains the learning of classical books or *Kitab Kuning* either it is conducted in the way of *Bandongan* or *Sorogan*. While, *Pondok Pesantren Kholafi* is *Pondok Pesantren* which restrains the learning of classical books or *Kitab-Kitab Kuning* and adds materials of general lessons for its schools or founds general schools beside the lessons which are taught at *Pondok Pesantren*.
2. Karel Steenbrink, a Dutch anthropologist, categorizes *Pondok Pesantren* into: *Pesantren Tradstional* (The traditional *Pesantren*) and *Pesantren Modern* (The modern *Pesantren*). *Pesantren Tradstional* is *Pesantren* which still restrains and tolerates towards local tradition. While *Pesantren Modern* is *Pesantren* which emphasizes and focuses on formal or

general education, collective leadership, modern English and Arabic based-curriculums, the classical teaching methods and the learning of *Kitab Kuning* have not become main materials and primary reference.

3. Prof. Dr. Haidar Putra Daulay categorizes *Pondok Pesantren* into five categories. The first category is *Pondok Pesantren* which teaches religious materials that are taken or have sources from the classical books or *Kitab-Kitab Kuning* by using the teaching method of *Bandongan* or *Sorogan*. The second category is *Pondok Pesantren* which teaches religious materials that are taken or have sources from the classical books or *Kitab-Kitab Kuning* in which the teaching-learning process is carried out by means of classical and non-classical methods. In this category, *Santri* is divided into the level of *Ibtidaiyah* (Elementary schools), *Tsanawiyah* (Junior High schools), and *Aliyah* (Senoir High schools). The teaching methods which are used are *Bandongan*, *Sorogan* and *Musyawaroh* (Discussion). The third category is *Pondok Pesantren* which teaches materials of general lessons and added by other skill education such as: sport, scouting, art, organization, and even some *Pondok Pesantren* have developed materials of social or civic education. The fourth category is *Pondok Pesantren* which emphasizes and focuses on religious materials and lessons in terms of skill materials. The lessons in terms of skill materials are intended to afford provisions towards *Santri* after they graduate from *Pondok Pesantren*. The fifth category is *Pondok Pesantren* which teaches religious materials taken from the classical books or *Kitab-Kitab Kuning*, beside the lessons of general materials. In other sides, the curriculum of *Pondok Pesantren* can be divided into two categories. The fist category is curriculums which

are made by *Pondok Pesantren* themselves. The second category is curriculums which are made by government to modify the religious materials which are made and arranged by *Pondok Pesantren*.

4. S. Yunanto dkk, categorize *Pondok Pesantren* into five categories which is based on the affiliation of *Kyai*. First, *Pondok Pesantren* in which the religious leaders are recognized as figures of *Nahdhotul Ulama'* (The biggest religious-social organization) in Indonesia with its organization typicality, *Ahlus Sunnah Wal Jamaah*. Second, *Pondok Pesantren* which is founded by figures and activists of *Muhammadiyah* (The second biggest religious-social organization after *Nahdhotul Ulama'*). Third, *Pondok Pesantren* which is founded by activists and leaders of Persatuan Islam Indonesia (PERSIS). Fourth, *Pondok Pesantren* which does not identify with one of the religious-social organizations or *Pondok Pesantren*. They state that they are absolutely reliant and also claim their presence is for all religious-social groups and religious-social communities in Indonesia. Fifth, *Pondok Pesantren* in which founding fathers have relationship with the leaders of *Darul Islam* movement. They at first were joined at struggling of the founding of *Negara Islam Indonesia* or *NII* (Indonesian Islamic State).

It is based on the fives researches which have been carried out, there definitely are lacks and simplification towards the dynamics of *Pondok Pesantren* in Indonesia. Hence, the researcher tries to implement Mainstream (*Arus Utama*) of religious thought of *Pondok Pesantren* in Indonesia. Then, the writer makes the typological categorization which is based on the consideration of some elements that have been implemented by Dhofier, Steenbrienk, Daulay, EMIS, and Yunanto, dkk. The efforts of making the typology

absolutely have implication towards simplification of any complex phenomena with respect to *Pondok Pesantren*.

On the basis of the research towards the literary review and the initial field study at the central regions of *Pondok Pesantren* in East Java, Daerah Istimewa Yogyakarta, and East Java including Madura[11], eventually it can be determined five kinds of mapping. This mapping is based on the great Mainstream of religious thoughts of *Pondok Pesantren* formed by various historical processes and its touches or contacts with external traditions such as: the social modernization and lot of political phenomena.

As mentioned above, the initial constructions of thought of religious *Pondok Pesantren* which comes to Indonesia have *Sufistical* characteristics. The characteristics develop and are accompanied by the reinforcement of *Fiqh* forming the model of thought which is relatively dominant at *Pondok Pesantren*. On the development, the model of thought touches with the social modernity and the social-humanity tradition. The intellectual touch or contact and the social modernity appear three mainstreams of *Pondok Pesantren's* thought.

First, *Pondok Pesantren* which stays on restraining learning and perpetuating the classical Islamic inheritance with all educative instruments. *Santri* community usually mentions *Pesantren Salaf* or *Pesantren Tradisional* (Traditional *Pondok Pesantren*).

Second, *Pondok Pesantren* which accommodates the two mainstreams of thought, the social modernity and the social-humanity tradition, by founding official/formal schools or education and combining two intellectual traditions between Islamic tradition and Western tradition. *Santri* community usually mentions *Pesantren Modern* (Modern *Pondok Pesantren*).

11 The respect towards Empire Tenno Haika as the descendent of God (*God Amaterasu*) by getting down 90 degree to face Tokyo everyday at seven sharp

Third, *Pondok Pesantren* which develops the learning towards religious books or *Kitab-Kitab Kuning* beyond the initial basis of *masa ke-Madzhab-an* (Era of school of scientific thought pertaining to Moslem laws). *Pondok Pesantren* of this model develops responsiveness and sensitivity towards the social changes. *Pondok Pesantren* also learns the pluralistic themes across *Mahzhab* (School of scientific thought pertaining to Moslem laws) and develops the additional learning of the social knowledge. *Pondok Pesantren* of this model can be divided again into two types of *Pondok Pesantren*. The first type is *Pondok Pesantren* which has relatively strong tradition of social-humanity knowledge and also has liberal characteristics. The contact of this point yields a reformation in a sense of the modernization of education. It also appears the mainstream of liberalization of thought. The addition of religious discourse which is beyond normative boundaries of *Madzhab Fiqh* or *Madzahibul Arba'ah* (*Madzahibul Arba'ah* in Islam always relates to the persuasions of Imam Syafi'i, Imam Hanafi, Imam Hambali, and Imam Maliki) can be found at some *Pondok Pesantren* such as: *Pondok Pesantren* Ma'had Aly Krapyak, Yogyakarta and *Pondok Pesantren* Lirboyo, Kediri. The second type is *Pondok Pesantren* which conducts dialectical process with critical-social knowledge. The process yields transformative Islamic discourses and succeeds of dragging *Pondok Pesantren* down in a social encounter.

Basically, each of the two typologies has the same roots towards what is called as *Tradisi Salaf* (A tradition which emphasizes and focuses on the learning of classical books or *Kitab-Kitab Salafiyah*). One of the similarities is the tradition of classical knowledge which is definitely rich and fulfilled with the tradition of thought differences which are rich in the form of a literary learning. But on the development, *Pesantren Salaf* of the first category is characterized by the management of the traditional education and boundaries of discourse which never discharge from the traditional

paradigm of referring to *Standard Books* (*Kutubul Mu'tabaroh*). The literatures which do not include on the category of the *Standard Books* are considered not having qualified legitimacy to be used as an argumentation basis to analyze and solve the religious and social matters. While, *Pesantren Salaf* of the second category is signaled by the traditions of thought which have started to shift from the traditional bases. It is not restricted again by requirement of using the *Standard Books*. All the same, beside on the tradition of knowledge, this typology still shows the different construction of thought. Some *Pondok Pesantren* follow traditional education system and some other *Pondok Pesantren* follow modern traditional system.

On other fields, it is found another kind of *Salafiyah* mainstream which is different with two above descriptions-*Pondok Pesantren* which has a strong tradition of social-humanity knowledge and liberal characteristics and *Pondok Pesantren* which conducts dialectical process with critical-social knowledge. It is called *Salafiyah* because the adherents claim that they are the followers of *Salafus Solih*. What makes the difference is the epistemological root of the mainstream which builds the religious thoughts which are taken directly from the Islamic texts without considering the historical and structural contexts. The construction of thought of this mainstream when it touches with the social modernization which is considered ideologically contrastive emerge *Revivalism* of the religious thought and the religious movement.

Another mainstream which needs to pay closed attention is the appearance of *Pondok Pesantren Mahasiswa* (Student Moslem boarding schools of of a certain college or university). *Pondok Pesantren Mahasiswa* is usually *Pondok Pesantren* which is founded, built or under control of a certain college or university such as: *Pondok Pesantren Mahasiswa* Universitas Islam Indonesia (Indonesian

Islamic University), *Pondok Pesantren Mahasiswa* Universitas Islam Negeri Malang (Islamic State University of Malang), *Pondok Pesantren Mahasiswa* Institute Agama Islam Negeri Sunan Ampel Surabaya (State Institute of Islamic Studies of Surabaya), and *Pondok Pesantren Mahasiswa* Universitas Sultan Agung Semarang (Sultan Agung University of Semarang). Some *Pondok Pesantren Mahasiswa* are also founded by *Kyai* or *Nyai* in which the locations are near or easy to be accessed or reached from the locations of campus such as: *Pondok Pesantren Mahasiswa* Al-Muhsin, Krapyak Yogyakarta and *Pondok Pesantren Mahasiswa* Al-Hikam Malang, East Java, and other *Pondok Pesantren Mahasiswa*. Some researchers of *Pondok Pesantren* firmly state that *Pondok Pesantren Mahasiswa* actually inherits the modernization of education curriculums but in practice, it looses *Élan Vital Intelektualisme* (The primary intellectual capability). It is based on the management, *Pondok Pesantren Mahasiswa* can be called *Pondok Pesantren Modern* (*Modern Pondok Pesantren*) because *Pondok Pesantren Mahasiswa* is managed on the basis of management of *Pondok Pesantren Modern*. However, it should be admitted that if it is based on the development of thought, *Pondok Pesantren Modern* undergoes stagnancy. *Pondok Pesantren Modern* has not appeared a mainstream of a new thought of Islamic which derives from *Pondok Pesantren*, particularly *Pondok Pesantren Mahasiswa*. It means that has not offered a new thought of solving the society's problem.

جَامِعَةُ النُّوْرِ لِلْعُلُوْمِ الْقُرْآنِيَّةِ ٢٠١٨

AN NUR UNIVERSITY FOR QURANIC STUDIES

INSTITUT ILMU AL-QUR'AN

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CHAPTER

IV

Sexual Right and Reproductive Health According to Javanese Kyai and Nyai

Sexuality is a word which has lot of interpretation. Hence, the chapter would like to elaborate the sexuality matter according the perspectives of inner actors within *Pondok Pesantren*. There are so many problems appear when the sexuality is discussed among the environment of *Pondok Pesantren*. The problem is that the sexuality is not only dealt with fulfilling the biological needs, but the sexuality is also a concept, social construction toward values, orientation, and behaviors which are relating to sexual attitudes. The sexuality can be classified as social categorization which is able to afford the social status and also the social role which can limit and manage behaviors. It means that the sexual behaviors of somebody are limited by a standardized and established rule that becomes the restriction of normality which must be followed by community which supports the standardized and established ruler. From this point, there will be a debate between those who consider the sexuality matter as the perspective of God's will and those who consider the sexuality matter as a cultural construction. Here, the religious dogma plays significant roles in the debates in terms of the sexuality matters.

The matters of right and reproductive health including the sexuality matter in Indonesia still become a serious problem either it is related to make somebody free from all diseases and sexual violence or the matters related with a certain socio-cultural setting that have implication for health and neglect fulfilling the right of the reproductive health. It means that the matter of reproduction is not only a matter of medical techniques, but also the matter of process of orientation which is formed and influenced by certain social and cultural factors and then shapes a subjective meaning that will influence their behaviors. According to Biran Affandi (1997: 23-24), the reproductive health includes three components of ability, namely the ability to reproduce, the ability to success of giving healthy children, growing up and developing, and the ability to give safety that means that all the reproductive process including having a sexual relationship, pregnancy, giving a baby, contraception and an abortion should not become a dangerous activity. Biran also adds that there are four main pillars of the reproductive health, namely *the maternal care, the infant and child care, the prevention and treatment of Sexual Transmitted Diseases (STDs)* and *the fertility regulation.*

It should be recognized that there are so many socio-cultural discourses which have contestation each other in the issue of sexuality. Moreover, according to the culture of Eastern traditions including Indonesia, the issue of sexuality constitutes the taboo matter to be talked towards the public. Even specifically, talking about the issue of sexuality around *Pondok Pesantren* (Moslem boarding schools), talking about the sexuality issue towards the public is considered as *Dosa* (Sin which is caused by doing a deed forbidden by the Islamic laws), infringement towards the Islamic laws. The studies and references dealing with the sexual actions and behaviors are still less or if there are studies about the issue of sexuality, so they will look up the issue of sexuality

from aspects of marriage, Islamic law perspectives, the aspect of genetic relationships and other aspects.

For that reason, the study about the sexuality issue, in this chapter, would like to triy to analyze the sexuality issues from the perception, views, thought and interpretation of "inner actor" at *Pondok Pesantren* about the sexuality issue itself. The study in this sub-chapter will be classify in to eight sub-chapter, namely: 1) The issue of physically integration which is focused on the women circumcision 2) Enjoying sexual relationship 3) The refused sexual relationship 4) The sexual violence 5) The sexual orientation 6) HIV/AIDS and other infected diseases 7) The sexual education and the sexual information 8) The issue of the Family Planning 9) The issue of abortion 10) The issue of early marriage 11) The contracted marriage (*Nikah Mut'ah*) and doing polygamy.

A. Women Circumcision (*Khitan Perempuan*)

Circumcision or *Khitan* is a term that is absolutely familiar for Moslem people. *Khitan* may be defined as cutting off the pore skin of a boy or man for religious or medical reasons. *Khitan* may also be defined as cutting off all or part of the external organs of a girl or woman for religious or medical reasons. *Khitan*. So far, *Khitan* for women still becomes debate not only for the followers of culture but also for religious scholars. The written data and the published-empirical data about *Khitan Perempuan*, it is difficult to find, but in the middle of society *Khitan Perempuan* exists and is still practiced such as the data which are written by Kristi Wulandari, dkk. (1998). She writes that in Sundanese and Batavia community, *Khitan* is one of Islamic requirements or even God' commands which is *Wajib* or obligation for the Moslem people to conduct. *Wajib* means something that the performance avoidance of which yields merit or *Pahala* and the avoidance of which is sinful or *Berdosa* based on the Islamic rules or laws. According to their

opinions, either female children or male children should do *Khitan* in order they may be called *Pemeluk Islam* (Followers of Islam).

Syaikh Ibrohim Muhammad al-Jamal states that it is based on the perspective of Syari'ah and the medical perspective, the religious scholars have different opinions *(Ikhtilaf)* in terms of *Khitan Perempuan*. Some medical experts propose opinions that a woman needs doing a circumcision. Other medical experts propose opinions that a woman does not need doing a circumcision. The debate also occurs among the religious figures of *Fiqh* (the Islamic schools of thought). Madzhab Syafi'i (school of thought, where the majority of Moslem in Indonesia) holds it, states that *Khitan Perempuan* is *Wajib* (Something that should be done based on the Islamic laws or rules) or obligation the circumcision which is conducted for the men. The circumcision is *Wajib* (An obligation), as *Ibadah* (Worship) and as *Syi'ar Islam* (Symbol of the glory of Islam). Whereas, Imam Ahmad states that circumcision for the Moslem males is *Wajib* (An obligation) and for the Moslem women, it is kind of dignity or magnificence. The last opinion of the circumcision is proposed by Imam Hanafi and Imam Malik. They state that the circumcision is recommended for both men and women. Syaikh Al-Jamal prefers choosing that *Khitan Perempuan* is *Masyru'* (ordered by Allah SWT). It is based on *Hadis* (Traditional collection of stories related to Prophet Muhammad's deeds and words) which is narrated by Ummi A'thiyyah who shows the woman circumcision which is practiced by people of Madinah who do a circumcision for their woman children. Looking at the practice, Prophet Muhammad SAW states: "*La Tanhaki, Fainna Dzalika Ahdho Lizzauji, wa Asyroqu Lil Wajhi* (Don't cut the clitoris all, because the woman circumcision will make women' face be very shining and make the men be very happy) (*Abu Daud, Al-Sunan, IV/368*)." Al-Jamal states that it is not allowed to cut off all

clitoris because it means destroying the woman sexuality (*Syu'ur Al-Jinsy 'Indaha*) (*Al Zuhailil, III/642 and Al-Jamal: 22*)."

Khitan Perempuan is one of the issues which is related to the problem of women' reproductive health. With regard to *Khitan*, Al-qur'an itself do not explicitly mention it either *Khitan* for men or *Khitan* for women. The holy Al-qur'an only states "Wish you following the traditions of Prophet Ibrahim". And then, many interpreters state that *Khitan* is one of traditions brought by Prophet Ibrahim. Dr. Randanan Bandoso writes WHO magazine (on MT-PPI, II/48), *Khitan Perempuan* was done in East Africa such as Ethiopia, Senegal, Egyptian and even in Southern Asia such as Malaysia and Indonesia. Most *Khitan Perempuan* were conducted by female magicians by using ways which were not sterile. The techniques which were used were different from one place to another. Principally, it is done on clitoris (the outside genital organs of women which appear over the vagina, under the small lips of vagina) by cutting it. The followings are the techniques which are usually used:

1. Cutting the whole part of clitoris circularly
2. Cutting the end part of clitoris or the whole part of clitoris.
3. Cutting the whole part of clitoris, the inner lip or even the outer lip of clitoris and then sewn.
4. Cutting the texture which is connected between anus and penis. This method is rarely to be used.

Yet, there will be many consequences for women who conduct *Khitan* by using the above techniques, either sooner or later. Such consequences are breeding, painful feeling, and also the infection that can cause danger for health. The consequences that come in the later day such as the difficulty of sewage which is caused by uncomplete healing of injury. Dealing with the practice of *Khitan Perempuan* (The Women Circumcision), *Ulama'* (The Islamic scholars) divides it into three categories.

First, Islamic scholars who states that the law of *Khitan Perempuan* is the same as *Khitan Laki-Laki* and it is conducted by injuring a part of *klentit/Itil* or clitoris (The upper part of female vagina). The opinions are proposed by *Nyai* ALF, *Kyai* MMN, *Nyai* SNT, and *Kyai* MHJ. They assume that *Khitan* must be conducted and it may not be conducted symbolically, but it must be conducted by injuring the upper *Klentit/Itil* (*Bidzir*) or clitoris of women. *Nyai* ALF states that:

> *"Menurut saya, hukum Khitan bagi laki-laki dan perempuan itu sama. Khitan bagi perempuan tidak dilakukan secara simbolis, kalau simbolis itu tidak dinamakan Khitan, itu (Khitan) bagi perempuan memang betul-betul dikhitan dengan cara melukai sekidit dari alat vitalnya. Bagian kecil klitorisnya ini sudah cukup berbeda dengan khitan laki-laki"*
>
> *"(In my point of view, the law of the circumcision towards the men and the women is the same. Khitan Perempuan (The women circumcision) may not be practiced symbolically because if Khitan or Circumcision is done symbolically, it is not called a circumcision. Khitan Perempuan is indeed practiced by injuring little of the vagina. The little part of the clitoris is different enough with the men circumcision)."*

The similar opinion is also proposed by *Kyai* MMN:

> *"Hukum khitan bagi perempuan itu sebagaimana dalam kitab Fatawiy Syar'iyyah karangan Hasan Nahl, Mufti di Mesir bahwa perempuan wajib dikhitan menurut Madzhab Syafi'i, sedang bagi laki-laki itu sebenarnya Sunnah."*
>
> *"(The law of Khitan Perempuan as stated on the book Fatawiy Syar'iyyah which is written by Hasan Nahl, Mufti (Adviser on religious law for a region) in Egypt, describes that women have obligation to do circumcision according to the Syafi'i school of thought, whereas Khitan Laki-laki, it is only Sunnah (Something that the avoidance of which is not sinful, but the performance of which yields merit).*

The four informants agree that women circumcision is done by injuring little part of clitoris (*Bidzir/Klentit*) of women, no cutting all of it. Even, SNT said that within her big family there is an expert

in the women circumcision and she had been circumcised when she was 12 years old. SNT states that:

"*Khitan untuk perempuan itu sekedar mengeluarkan darah dari Bidzir. Jadi Al-Hamdulillah keluarga saya sampai anak-anak saya juga dikhitan. Itu bisa dijalankan sendiri karena sedikit saja. Kalau keluarga saya ada ahlinya, ketika acara pertemuan keluarga (Haul) maka anak-anaknya dikumpulkan dan dikhitan. Saya dikhitan dibawah umur 12 tahun. Khitan simbolik dengan kunir belum keluar darahnya, harus ada yang dilukai sedikit intinya cuma itu, kalau terlalu banyak maka akan bahaya*."

> *"(The women circumcision is to make little blood out from Bidzir. Thus, al-hamdulillah (All praises belong to Allah) all of my family until my children are also circumcised. And it can be done by our selves because it is only a little. Because of in my family, there is the expert, when our big family gathered in holding a family meeting (Haul or praying and celebrating grandfather of grandmother who had died), so the children were gathered and circumcised. I was circumcised by the age of twelve. The symbolical circumcision with saffron did not make any blood out, there should be a little injury to make the blood out. that's the essence. If so much injuries, it could cause harmful danger).*

Beside as a religious obligation, *Khitan Perempuan* has another meaning that has very closed relation with the sexuality of women. By conducting *Khitan*, according to the first groups of the informants, the sexual libido of women would be *I'tidal* (more controlled, not so hyper, and not so cool). SNT states that:

> "The aim of Khitan Perempuan is to decrease Syahwat Perempuan (The sexual desire of women) in order the Syahwat Perempuan can be more controlled. (Tujuannya untuk mengurangi syahwat perempuan. Dimungkinkan agar syahwat itu bisa terkendali)."

In detail, *Kyai* MMN explains the ways and techniques of *Khitan Perempuan* as follows:

> *"Caranya dibuang pada waktu kecil yaitu pada bagian yang agak atas. Tetapi jangan terlalu masuk kedalam kalau terlalu kedalam bisa mengurangi gairah perempuan, tetapi kalau terlalu menonjol*

membuat perempuan itu hiper. Khitan itu untuk menyedangkan gairah perempuan pada tingkat libido perempuan menjadi I'tidal (sedang). Kalau tidak dikhitan menurut pandangan orang arif pada masa lampau, gairah libido perempuan jadi memuncak, menurut pengalaman Tajribah atau eksperimen)."

"*(The technique of Khitan Perempuan is thrown away the little and upper part of clitoris when she was still child. But don't come in deeply because it can decrease sexual desires of the woman, but if too swell out it make the woman become hypersexual desires. The circumcision makes the sexual desire become balanced/controlled, so that the sexual desire of the woman or libido becomes stable. If the woman was not circumcised, according to the wise figures in the past and also some Tajribah or experiments, the sexual desire of the woman or libido would culminate).*

The same opinion also proposed by Kyai MHJ by stating that:

"*Khitan bagi perempuan ini supaya wanita itu bisa lebih mudah mengendalikan wanita itu dari gairah seksual. Kalau tidak dikhitan, wanita akan kesulitan mengendalikan gairah seksual. Dengan dikhitan akan menjadikan wanita menjadi sholihah dikemudian hari*"

"*(The women circumcision is in order a woman becomes easier of controlling the sexual desire of women. If she is not circumcised, the women will have difficulty of controlling the sexual desire. By having the circumcision, the women will have goods in the future).*

Further, MHJ states that there is a distinctive characteristic between the woman circumcision and the man circumcision, both in the technique of circumcision and the way of celebrating it. MHJ states that:

"*Sebenarnya bukan simbolis tetapi memang betul pelaksanaan khitan, bagi wanita itu ada tata caranya, laki-laki juga demikian. Di kampung-kampung, kalau laki-laki maka diramaikan dengan pesta, sedang bagi perempuan hanya diam-diam misal pergi kerumah sakit. Jadi khitan bagi laki-laki dan perempuan itu sama-sama disunahkan. Cuma Hadits-nya cukup panjang bahwa khitan itu Sunnah Muakad).*"

("Actually, the women circumcision is not symbolical activity. It is really must be done. There are rules and techniques for the women circumcision. So are the men. At the villages, if a man has a circumcision, it is celebrated by party, and for the woman, it is conducted silently such as going to hospital. Thus, the circumcision for both men and women is actually Sunnah (Recommended), but the Hadis is long enough to explain that the circumcision is Sunnah Muakad or strongly recommended).

Second groups, they state that the law of circumcision is *Sunnah* (Recommended), both depend on every Moslem. This opinion is proposed by *Kyai* HSN, *Nyai* AST dan *Kyai* MST. MST states that:

"Saya pernah berfikir bahwa perempuan tidak ada khitan. Itu dulu, sebelum saya membaca, tetapi setelah ada pendapat khususnya di dalam kitab-kitab Syafi'iyyah ternyata ada. Kalau ada manfaatnya dari segi medis mungkin ya (Khitan,red), kalau tidak ada ya, ya betul-betul sunat tetapi tidak apa-apa tidak dilakukan. Kalau sunat ya dipotong, tetapi hubungannya dengan kesehatan karena alat tidak berfungsi. Dalam kondisi biasa sunatnya itu kearah mubah. Boleh ya, boleh tidak."

"(I ever think that no circumcision for women and it is in the past, before I read some literatures, but after there was the existence of legal opinion particularly on the books of Syafi'i school of thought, there is provely the woman circumcision. If there is advantage based on the medical perspective, the woman circumcision is recommended, if not any, it is really recommended (Sunah), but it is alright if it is not done. The circumcision must be cut, but the relation is with the woman's health because the genital does not have any function. In the normal condition, the circumcision is Mubah, it may be done, and may not be done).

Kyai MST considers advantages or disadvantages of the women circumcision, if no advantages it can change to *Haram* (Forbidden). MST states that:

"Kalau sampai membahayakan maka justru tidak, karena barang Sunnah menjadi membahayakan dan bahaya itu Haram. Kalau khitan itu Sunnah, tetapi menimbulkan bahaya tentu saya tidak mengkhitan."

"(If the woman circumcision makes danger, the woman circumcision can be delayed, because everything which is Sunnah (Recommended, something that the avoidance of which is not sinful, but the performance of which yields merit), if it can take danger, it becomes forbidden (Haram). If the woman circumcision is Sunnah (Recommended), but it causes danger, so I will not circumcise).

The third groups, they states that the women circumcision is not recommended and it is better not to be applied. If it is applied, it is recommended to conduct it symbolically. This statement is delivered by Kyai RY and Kyai TQM. Kyai TQM states that:

"Sebaiknya khitan bagi perempuan itu tidak karena itu kekerasan, tetapi memang ada ulama' yang membolehkan dan juga ada Hadisnya seperti al-Khitanu Sunnatun Lirrijal Wamukarromatun Lin Nisa'. Tetapi saya melihat dari sisi urgensinya tidak seurgen laki-laki yang disitu bisa menyempurnakan bersuci. Kalau dalam hadits ada, yang paling ideal khitan bagi wanita itu simbolis saja kalau memang ada, Memang prakteknya dizaman Muhammad SAW dibiarkan oleh Muhammad SAW. Tetapi saya nggak tahu apakah dulu tidak ada kekerasan yang menyakitkan perempauan atau tidak. Tetapi pandangan Imam Ghozali kayaknya melarang. Dia tidak sepakat dengan khitan bagi perempuan)."

"(It is better if the women circumcision is not be applied because it is a part of violence but there some religious scholar (Ulama') who permit it, and also there is Hadis as Al-khitanu Sunnatun Lirrijal Wamukarromatun Linnisaa. But I see from the significance, it is not significant as the men circumcision in which the men circumcision can complete the process of Thaharah. If in Hadis exists, the most ideal for the women circumcision is conducted symbolically. Indeed, in the era of Muhammad SAW, Muhammad SAW was silent of responding this women circumcision. But, I don't know whether in the past time, there was not any violence towards the women or not. But it seems, Imam Ghazali forbade it, Imam Ghazali disagrees with the woman circumcision).

The similar opinion is also proposed by RY by stating that:

"*Kalau saya sebenarnya sepakat dengan yang simbolis, jadi tidak dengan dipotong. Kalau di masyarakat itu terkadang hanya pakai*

kunir aja, itu secara simbolis sudah dikhitan. Menurut saya, secara simbolis saja itu juga tidak apa-apa."

"(*I actually agree with the symbolical woman circumcision, so it is not by cutting. If in the middle of community it sometimes only uses saffron, it symbolically has been circumcised. In my point of view, it never minds for symbolic circumcision).*

It is based on the above opinion of the informants of research, it seems that the woman circumcision used as a way to pressure sexuality and to control the reproduction function of the women as the statement of Imam An-Nawawi who has opinion that the sexual desire of woman is 9, and the sexual desire of man is 1. It is clear that the matter of restraint the sexual expression of women as the first group stresses. It is different with the first group, the two last groups are more moderate by stating that the matter of *Khitan Perempuan* or the Woman Circumcision may be conducted or may not be conducted by looking at the basis of advantages. Even, the third group states that it is better the women circumcision is not done. If it is conducted, it is conducted symbolically by using saffron and the like.

If the problem of circumcision is analyzed more detail, actually there is no strong verses or evidence which obligates the circumcision. The mention of genitals which is circumcised from both women and men does not show the stipulation of law. The mention can be meant *Hakiki* (True or authentic) or *Majazi* (Metaphor). So is *Hadis* which is *Riwayat* (Narrated) by Muslim from Abu Hurairah, that Prophet Ibrahim is circumcised. Following the religion of Prophet Ibrahim about *Khitan*, it means to follow the tradition of Prophet Ibraham, the part of it is *Khitan* (Circumcision). Islam as religion which is spread by Prophet Muhammad SAW who follows Prophet Ibrahim's tradition orders the followers to do circumcision. Prophet Muhammad himself was circumcised at the age of seven years old. It is based on the narrative (*Riwayat*) from

Abu Dawud and Ahmad, Prophet Muhammad SAW order to cut *Jahiliyyah* hair and to do circumcision. According to the narrative (*Riwayat*) from Abu Hurairah, it is ordered to do circumcision when somebody enters Islam. This narrative (*Riwayat*) is debated by Ulama' (Some religious scholars) in terms of *Kesohihannya* (The validity). Those are all about the basic law of circumcision, not only for men but also in general for women. Because of the unclear verse or evidence, so many religious scholars have different opinion about it.

The researcher agrees with the statement of Syaikh Mahmud Syaltut (1966), Mufti (Adviser on religious law for a region) of Al-Azhar Egypt. He states that there are no strong verses or evidences of the woman circumcision, and so it backs to the positive or negative impact of it. Considering the positivity or negativity can not recommend the woman circumcision even obligate the woman circumcision. It may become considerations, because the evidences or verses in terms of the women circumcision is not so clear. For further, because the women circumcision is not an obligation, surely the woman who has grown up or declares to enter Islam after she becomes adult does not obligation to do a circumcision.

In other side, qualitatively, *Hadis* which becomes judgment the stipulation of doing circumcision according some religious scholar such as Abu Daud, Ibnu Munzir, al Syaukani and Sayid Sabiq is weak *(Dla'if)*. Sayyid Sabiq strongly states that: "All Hadist dealing with the woman circumcision is weak *(Dla'if)*, none of them is *Sahih (Invalid)*. (Fiqh Sunnah, 1/26). *Semua hadits yang berkaitan dengan Khitan Perempuan adalah Dhaif (Lemah), tidak ada satupun yang Sahih (Invalid)*. (*Fiqh al Sunnah, I/26*)." Logically, cutting some parts of woman organs which are extremely sensitive is hard to be understood, what is the advantage? Definitely, it differs from males. The cutting of clitoris is missing the sexual organ of

women. Because of that, the researcher agrees with statement of Kristi Purwandari, dkk. who said that the woman circumcision although did not causes serious damage for the sexual organ but it exactly infringes the human rights. Because of that, a baby who is less then 40 days should be received (his sexual organs) to be ills without any keeping off.

Therefore, the statement of Prophet Muhammad SAW about the practice of circumcision which is conducted by people of Madinah should be able to be interpreted as the respond from Prophet Muhammad SAW towards the tradition of circumcision which, at that time, has strong roots in Arabic society and gradually and persuasively reduces it. It is because the abolition of culture totally and directly will appear a strong resistance from community. The statement of Prophet Muhammad SAW also indicates to the effort of eliminating the woman circumcision as the practice of the woman circumcision based on the medical perspective has no advantage, even injuries or damages the organs.

While, in dealing with the *Sifon* tradition that is a sexual relationship for somebody who conducts a circumcision, it is categorized as *Zina* (Committind adultery) and *Haram* (Forbidden, prohibitted). It is based on the research which is done by Primus Lake (1999: 43-47) that in Timor Island, there is a *Sifon* tradition which means that someone who does a circumcision has to do (*Wajib*) a sexual relationship before the injury of circumcision is really recovered. Its aims is to throw away the hot sense from the process of circumcision. Because the *Sifon* tradition is an obligation, somebody who is circumcised must find a woman to have the *Sifon* tradition. According to Lake, the woman of *Sifon* is a woman who serves a patient of *Sifon* to have a sexual relationship is *Wajib* for the sake of *Sifon*. They must be the women who ever gives birth or minimally they get habit to do a sexual relationship such as a

prostitution girl (Sex commercial women or PSK), a wife of others or a widow. *Ulama'* or the religious scholars from *Pondok Pesantren* (Moslem boarding schools) firmly agrees that *Sifon* tradition is exactly *Haram* (Prohibited, forbidden or something that the avoidance of which yields merit or *Pahala* but the performance of which is sinful or *Berdosa*) and the subject should be punished by the criminal law. Kyai MST states that:

> *"Itu (Sifon) haram. Perkawinan harus syar'i. apapun alasannya harus sesuai dengan syari'at islam. Itu tradisi yang tidak benar. Hubungan seks diluar nikah itu adalah zina. Masak Syari'at dikalahkan oleh adat, walaupun ada kaedah"Al-'Adah Al-Muhakkamah", tetapi menurut saya tidak seperti itu. Kalau saya itu tetap haram. Hubungan sex itu harus dalam ikatan perkawinan yang syah, baik secara syar'i maupun Negara".*
>
> *(The Sifon tradition is Haram (Prohibited, forbidden or something that the avoidance of which yields merit or Pahala but the performance of which is sinful or Berdosa). A marriage should be Syar'i (Following the laws of God). Whatever the reason, it should be in concord with Islamic laws. The Sifon tradition is not true. A pre-marital sex is categorized as Zina (Committing adultery). Is Islamic law subordinated by the local culture? Even though, there is a principle "Al-A'dah Muhakkamah, but according to my point of view the Sifon tradition is still Haram (Forbidden, prohibited). A sexual relationship should be carried out on the bound of a legal marriage, according to Islamic laws or State's rules)."*

Nyai SNT also proposes that the *Sifon* tradition is unpleasurable according to Allah SWT. Even, TQM categorizes the *Sifon* tradition as myths and *Bid'ah dhalalah* (New creation of teaching within Islam but it is not based on Prophet Muhammad teachings). TQM states that:

> *"Tradisi sifon itu mitos. Nggak ada dasarnya. Bid'ah Dholalah. Disamping melanggar Syareat itu kan jelas, melanggar agama. sama saja dengan menyuruh zina. Harus ditolak itu. Budaya itu tak semuanya harus dengan alasan Local Wisdom. Menurut saya, nggak*

bisa itu, orang beragama lho. Kearifan local harus mempertimbangkan prinsip-prinsip Syari'at yang merupakan Fundamanetal Value".

"(The Sifon tradition is a myth. No fundamental basis. Besides, it is Bid'ah Dholalah and it is violating the religious dogma. It is also means to order someone to commit adultery (Melakukan zina). It must be refused. The culture is not usually using Local Wisdom. In my point of view, Local Wisdom should consider Islamic principle of Syari'ah as the fundamental values)."

B. Enjoying Sexual Intercourse

The sexsual relationship is one of the pleasure and enjoyment which is offorded by Allah SWT. Besides, the sexsual relationship fulfill the biological needs, it also complete the spiritul and social relationship. it also contains a value of devotion or worship. The sexsual relationship is a need which involves two sides, name the woman side and the man side. It is not to make one side enjoy, and make another side feel dissappointed. Ideally, on a sexsual relationship, the two sides can enjoy and satisfy the relation each other. But, there is sometimes a problem is the sexsual relationship. There are men in the reason of superiority doing a sexual domination in conducting a sexsual relationship and consider that it is the obligation of the women, so that the man neglects the women's rights to enjoy the sexsual relationship.

As a biological human being, the men and the women have the same necessity to enjoy a sexsual relationship (Coitus). The need of a sexsual relationship is a natural tendency of the human beings including the man. On Islam, the needs of the sexsual relationship must be conveyed through a bound of Marriage in which it is based on *Al Qur*-an and commonly called as *Mitsaqon Ghalizha* (a extremely strong agreement). However, on many Fiqh iteratures of Islam, the rights of enjoying the sexsual relationship look slike becoming the domain of men. The rights of enjoying the sexsual relationship of women are reduced, if it is not put aside.

The srongest opinion is coming from the Syafi'i persuasion, for example, he proposes that the obligation of a man (a husband) in serving the need of the sexsual relationship of a woman is only once a life time. It is only also the demand of moral (*Al Jaziri, Al Fiqh `ala Mazahib al Arba'ah, IV/3*). The rest of doing the sexsual relationship depends on the man (the husband) to fulfill it or not. In other words, the husband has right on the enjoyment of a sexsual relationship, and the woman must fulfill it. The better view is proposed by the followers of *Mazhab* Maliki (the Maliki school of thought), altought it stays biased. It is stated that the husband has to serve the sexual needs of the wife only if the husband's refusal make the wife suffered.

The above perspektif of *Ahli Fiqh* (The experts of Islamic laws) seems to be a consequence of the marriage implementation which they made. Most *Ahli Fiqh* agree the marriage implementation as *Akad* (Covenant) which affords rights towards the men to make enjoyment of the woman body. Besides, the implementation shows the man's prespectives, it also shows the woman only as a body and a reproductive organ which is interted and proper to be enjoyed, not as a complete body with all desires and human desires. On the other sides, the view of *Ahli Fiqh* seems on the basis of arguments of *Hadis Nabi SAW* (Traditional collection of stories relating to Prophet Muhammad's deeds and words) which is read literally interpreted biasedly by the men. Prophet Muhammad SAW states that a woman who refuses the sexual desires of the husband is condemned by angles until morning (*Read: Shahih Bukhari, V/1992*). The religious discourse seemingly has developed and becomes a kind of culture whivh still goes untill the recent time

The obligation of a woman to cedeher body towards a man without doing any refusal actually can make the woman hard to control her rights of reproduction. It is not only she may not get

the sexual enjoyment, but also become a psycologically-heavy pressure. Furthermore, the uncapability of the woman to refuse the sexual desires of the man can appear the bad effects for the reproductive rights. This view is absolutely difficult to understand when it is related to the equality principle of right between the man and the woman and the message of *Al Qur-an* in terms of the needs to build a love relation or *Relasi cinta kasih* (*Mawaddah wa Rahmah*) between the husband and the wife in creating a household for a healthy and devoted generayion (Generasi yang sholeh dan sehat). *Al Qur-an* and *Hadis* also always emphasize the significance of relationship to be built on the basis of *Mu'asyarah bi Al Ma'ruf (A good relationship)*.

How about *Ulama' Pondok Pesantren* look at the issue, is there any possibility for the woman to enjoy the sexual relationship or the woman only has obligation to seve and has no right to enjoy the sexual relationship. And, is there any possibility for the woman to beg of having the sexual relationship? According to *Ulama' Pondok Pesantren* with regard to this issue, they agree that the wife right to enjoy the sexual relationship. *Kyai* ZMF, for example, states that:

> "*Ya harus, wanita juga punya hak untuk menikmati hubungan itu, sebaliknya laki-laki juga punya kewajiban untuk bisa memberikan kenikmatan kepada perempuan, apalagi Al Qur'an juga jelas itu, Wa'ashiruhunna Bil Ma'ruf, pergaulillah mereka dengan cara yang Ma'ruf. Ma'ruf ini pengertianya juga termasuk dalam hal melakukan hubungan suami istri*."
>
> "*(Yeah, it must be. A woman also has right to enjoy the sexual relationshi. On the contrary, the man also also has obligation to give ejoyment towards the woman, moreover, Al Qur'an also states clearly about it, Wa'ashiruhunna Bil Ma'ruf, get along yourwife by the right way. Ma'ruf definitely includes in the matter of conducting the husband-wife relationship)'.*

The same thingd is also stated by MHJ, ALF, and SNT. They sate that the woman has the same right with the man in terms

of having the sexual relationship, even according to MMF, if the couple feels unsatisfied, either the husband or the wife may propose a divorce. MMN states that:

> *"Saling memberi hak, artinya suami punya hak, istri juga punya hak. Karena itu, andaikata tidak bisa memberikan kenikmatan antara kedua pasangannya, ada hak untuk meminta cerai, baik dari pihak laki-laki maupun perempuan. Misalnya, laki-laki impotent maka istri berhak minta keputusan cerai"*
>
> *"(Giving right each other. It means that the wife has right, and the husband also has right. Therefore, if it may not be able to give satisfaction towards their couple, there is right to propose a divorce, either the husband or the wife. For example, the man has the sexual importancy, so the wife has right to propose a divorce)"."*

This opinion is absolutely clear that the woman has the equal right to in ejoying the sexual relationship. However, there is an opinion from proposed by *Nyai* AST that the woman has right to enjoy the sexual relationship. AST also adds that the woman has more capability to guard and to bear the sexual relationship, so that the important thing for her is giving service to the husband. *Nyai* AST states that:

> *"Ya jelas, jelas punya hak, hanya perempuan itu banyak Nerimo-nya, hanya secara umum saja, perempuan itu bisa menjaga, menjaganya yang penting suami puas, umumnya wanita itu memuaskan pasanganya. Akan tetapi hak itu mesti ada, sehingga dituntut juga laki-laki untuk bersabar untuk bisa mencapaikan orgasme bagi perempuan karena lebih lama. Sehingga perlu mengikuti Sunnah Rosulullah SAW, harus ada pemanasan dulu ya, tetapi yang namanya laki-laki kadang kaya' gitu ya nggak ….."*
>
> *"(Yes, definitely the woman has, but the woman is usually much Nerimo (Receiving). But in general, the woman can guard, guarding in order the husband feels satisfied. Generally, the woman can makes her partner satisfied. However, theright must exist, so that the man is also demanded to be patient to be able to reach orgasm for the woman because it can be more longer. So that, it needs to follow Sunnah*

Rosulullah SAW (The guidance of Rosulullah SAW in conducting a sexual relationship), there must be warming up, but the man sometimes as they are, aren't they ....)?

The opinion of AST still shows the subordination of the woman in enjoying the sexual relationship, although admits the existance of right, but the right is not equalized, it still stays giving a priority the man's interest. So is the stereotype that the woman is more able to guard the sexual desires, the woman gives in. The important is the couplefeels satisfied. Another opinion shows that there is still the peyorative view towards the right of enjoying the sexual relationship for the woman.

The issue of enjoying the sexual relationship in the middle of society still becomes a serious poblem, particularly for the woman. According to Prof. Dr. Wimpi Pangkahila in which he states that the amount of women who have got married and undergo the sexual disfunction is estimated much enough. It is based on the latest data, from 4.135 women who conduct consultation directly, it proves that 2.302 women admit that they never undergo any orgasm, and 527 women admit that they rarely undergo orgasm. The data show that about 50 % women undergo the sexual disfunction.

The issue of enjoying the sexual relationship derives from the mistaken comprehension about the marriage covenant, namely is marriage covenant *Aqd Tamlik* (The right of choosing) or *Aqd Ibahah* (The right of allowance of conducting the sexual relationship). In a sense of *Aqd Tamlik*, so the woman becomes the husband's possession. And depends on the husband of conducting the sexual relationship, anytime, anywhere, and any method of doing it. However, in a sense of *Aqd Ibahah*, so the equality between the husband and the wife will appear on the context of the social contract. RY, for example, states that:

"Kalau menurut saya, keduanya berhak menikmati….Cuma masyarakat kita selama ini banyak yang mengikuti Madzhab Syafi'i, akad nikah

itu sebagai Aqd Tamlik, akad kepemilikan terhadap perempuan. Hal ini beda dengan Abu Hanifah yang menyatakan bahwa itu Aqd Ibahah artinya laki-laki itu hanya boleh menikmati saja, asalkan sama-sama suka, sama-sama enak. Tetapi kalau salah satu yang enak maka tidak diperbolehkan menurut pendapat Imam Abu Hanifah. Tetapi kalau Imam Syafi'i, karena Aqd Tamlik maka yang penting pemiliknya, yang dimiliki jadi obyek."

"(In my opinion, both may have right to enjoy it .... but our society so far follow Madzhab Syafi'i (Syafi'i school of thought), the marriage covenant is considered as Aqd Tamlik, the marriage covenant of possession towards the women. It differs from Abu Hanifah who states that the marriage covenant is considered as Aqd Ibahah. It means that the man only may enjoy, provided that they like each other, they feel fine each other. But, if one of the sides feels fine, so it is not allowed according to the opinion of Imam Abu Hanifah. But, according to Imam Syafi'i, because of Aqd Tamlik, so the important is the owner, the one who is possessed becomes the object).

The consequence of woman having the right is the woman has right to beg her right of doing the sexual relationship as stated by SNT:

" Kita suami-istri itu yang saling Milkul Ibahah, jadi kita perempuan juga punya hak untuk meminta."

(We are husband-wife, the important is Milkul Ibahah each other. Thus, we are woma, we also have right to beg of doing the sexual relationship).

Even, if the husband refuses of doing the sexual relationship without any reasonable causes, the law is sinful. SNT states that:

"Ya, tentunya dosa karena mengecewakan sang istri. Sebaliknya istri yang menolak suami juga dosa besar."

"(Yes, it is sinful because it makes the wife feels dissappointed. On the other hand, the wife who refuses the husband of doing the sexual relationship is also sinful)".

The above statements of *Ulama' Pondok Pesantren* agree that the woman has the same right to enjoy the sexual relationship by using the good ways or *Ma'ruf*. It is started from Foreplay (*Pemanasan*), Orgasmic phase (*Fase Orgasme*) or Resolution Phase

(*Fase Peredaan*). It is in acordance with the guidance of Rosulullah SAW on Hadis which is narrated (*Riwayat*) by Ali bin Abi Tholib. Rosulullah SAW states that:

> *"Sebaik-baik kalian adalah yang paling baik kepada istrinya, sedang aku adalah yang paling baik kepada istriku. Tidak ada yang memuliakan perempuan kecuali orang yang mulia, dan tidak ada yang menghina perempuan kecuali orang yang hina."*
>
> *"(The best of you is the one who gets along the wife by the best way, while i am (Muhammad) the best one to my wife. No one who honors deeply a woman except the honor person, and no one who insults a woman except the insulted person).*

C. Refusing Sexual Relationship

The matter of a sexual relationship constitutes one of the rucial factors to create the hormony in a household life, so that the sexual activity must be able to afford attention, satisfaction, and enjoyment for the two sides. The principle is giving understanding that in cunducting a sexual relationship, the two sides must be in a good circumstance, physically or mentally.

The problem which is then appearing is how if one of the husband-wife couples particularly are in unready condition to conduct a sexual relationship. The unready conditions are tired, undiserable, or there are other conditions which disturb so that one of the husband-wife couples does not want to conduct a sexual relationship. This matter usually becomes a serious problem for the woman because there is a narrative (*Riwayat*) that a woman must always deign to conduct a sexual relationship, anywhere and anytime. If the woman refuses, does not want to conduct a sexual relationship, so the the angels will condemn her.

Kyai and *Nyai Pondok Pesantren* agree that there are rights for the women to refuses of conducting a sexual relationship if thre is really a reasonable cause, and can be justified on the basis of

the Islamic laws such as an extremely tired, sick, menstruation, parturition, and other Islamic causes (*Udzur Syar'i*). SNT, for example, states that:

> *"Kalau punya alasan misalnya mas saya sedang sakit, tentunya suami harus pengertian, kita harus saling terbuka dan saling rela sehingga tidak menanggung beban ketika tidur"*
>
> *"(If there is a reason, for example the wife is sick, the husband should be understood. We have to be opened each other and accept each other so that we do not take any burden when going to sleep).*

The problem which is then appearing is what is the standard that can be used to receive or accept of doing the sexual relationship, thre has been any detail explanation. The majority state that if the wife's refusal is not based on by the reason which is justified by the Islamic law, so the wife is sinful to refuse of conducting the sexual relationship. The law also prevail in converse. If the wife needs of conducting the sexual relationship, so the husband should be ready to serve. ZMF states that:

> *"Kalau suami dalam keadaan butuh, istri sebenarnya tidak ada alasan untuk menolak, kok menolak itu yang tidak benar, sebenarnya sama saja kalau istri butuh, kok suami menolak ya sama saja, karena itu merupakan hak"*
>
> *"(When the husband needs, actually there is no reason for the wife to refuse, but the wife refuses is not absolutely true. Actually, when the wife needs, actually there is no reason for the husband to refuse, but the husband refuses is not absolutely true, because it is a kind of the wife's rights).*

The wife's refusal to conduct the sexual relationship and refuse to determine the style which is used to conduct the sexual relationship can be categorized into *Nusyuz* (in Javanese language, *Purik* or going home for sympathy out of anger). SNT states that:

> *" Menolak itu belum sampai dikatakan Nusyuz. Nusyuz itu kalau dalam istilah Jawa Purik, apalagi kalau menolaknya itu dengan alasan-alasan yang jelas seperti sakit. Kalau menolak hubungan seksual dikategorikan sebagai Nusyuz itu kurang bijaksana.*

"(Refusing has not been said Nusyuz. Nusyuz in terms of the Javanese language is Purik, moreover, if the refusal is conducted by using unclear reasons such as sick. If refusing the sexual relationship is categorized into Nusyuz, it is definitely unwise).

Here, the contemporary *Fiqh* seems more operational of giving *Definisi Hukum-Hukum Cabang* (The branched-lawful definition) about the condition where one of the couples is justified to refuse of conducting the sexual relationship although it should be understood democratically and dynamically according to the condition of each husband-wife. In other words, it needs to found an intimate democracy between the wife and the husband.

D. Sexual Violence

Abusement and sexual violence can happen at a household life such as a sexual violence which is conducted by the husband towards the wife, parents towards children, uncles towards cousins, the boss towards the servant, and other violences outside and inside the house such as at the public places, hotel or working places or it may happen on a certain marriage bound such as the marital rape, or it happens outside the marriage bound such as raping, *Samen Leven*, incest, and other cases happening in Indonesia.

The sexual abusement or *Pelecehan Seksual* is defined as a deed which is commonly conducted by a man and addressed towards the women in the sexual field. The sexual abusement is not usually like by the women because te women feel insulted, but if the deed is refused, thre is possibility she will receive more negative effects. (Supanto, 1999: 7). Another definition is proposed by Sanisturi (on Supanto, 1999: 7). The sexual abusement is a sexual deed or a tendency of doing sexual action which is in characteristics of non-physical intimidation (Words, laguages, pictures) or physical intimidation (An invisible movement of holding, touching, groping, and kissing) which is done by the men individually or in group

towards the women. The sexual abusement constitutes a violent action towards the women which needs to be protested because it is a manifestation of unjustice which is related to a gender difference. This issue is not an individual problem, but also it is akind of crime which has root on the cultural, social, economical, and political values in the middle of society. The sexual abusement breaks up the fundamental rights, namely the right of anybody to enjoy the high standard of health, including the reproductive health and the sexual right. (on Supanto, 1999: 30). One of the the reproductive health and the sexual right is *Bodily Integrity,* namely the right on own body. It is only free from mistreatment and physical crimes, but also to enjoy the body potention of their own body for health, birth, and to enjoy safe sexual relationship.

The extremely concerned matter is the increase of the cases of the sexual abusement and the sexual crimes towards women. Even, the appearing phenomena are the data of "*Ice mountain*" because most women still consider that if the cases of the sexual abusement and the sexual crimes are reported to police, so it will be the same as uncovering disgrace of own body. the cases of the sexual abusement and the sexual crimes occured when the riot and conflict on medio of May, 1998. according to the initial data of Tim Relawan Untuk Kemanusiaan (The Voluntary Team for Humanity), it was noted that there were about 152 women were raped at the riot and conflict on medio of May, 1998. the same things also happened when there were the horizontal conflicts in many regions such as Aceh, Timor Timur, Maluku, Poso-Sulawesi Tengah, and Irian Jaya in which the riot and conflict left the endless trauma for the women. The data constitute "*Ice mountain*" because the victims of raping tend to be closed and do not want the cases are taken into court because it can take negative stigma for the women and make the family members fell shame.

Another case which is related to the sexual abusement is incest (A sexual relationship between people who are very closely related such as a brother and sister or a father and a daughter). In other words, incest is the raping cases which are conducted by the closed relatives of the victim such as father, uncle, and brother. Incest can happen because they love each other. Yet, the most cases of incest are caused through forcing or it is more exactly called *Perkosaan* (A raping). The cases of incest are usually uncovered after going on for years so that is is estimated that there are so many the cases of incest which are not uncovered. According to the data from Children in Need Special Protection Center (CNSP) (on Hathout Hasa, 2004), from 341 cases of the child violence in Indonesia in 2001, 60 % cases are the case of incest (205 cases). From 205 cases or 60 % cases, 1/3 cases (136 cases) are conducted by father, 1/3 cases are conducted by brother, uncle, and other people who have very closed relation with the victim. And, another case such as *Samen leven* (Kumpul Kebo), *the marital rape*, pornography, pornoaction and other cases, day by day, become incresing more and more. The problem should be overcome integratively, either through the cultural movement or structural movement.

Ulama' Pondok Pesantren discuss deeply the issue of the sexual violence and the sexual abusement. Evemtually, they state that the law of it is *Haram* (Prohibited, forbidden). Whatever the kind of the the sexual violence and the sexual abusement such as incest, raping, *Samen Leven*, *Dating Rape* and other cases. It is based on the Islamic law, the cases are forbidden. The sexual relationship only may be conducted by someone who has had the relation of husband-wife. All *Kyai* and *Nyai Pondok Pesantren* agree to refuse every sexual relationship outside the marriage bound, whatever the kind is and the reason is. HSN, for example, states that:

> *"Perkosaan, insest dan perselingkuhan itu menurut saya sikap yang tidak rasional sebagai seorang manusia, Hak yang diberikan oleh Allah*

itu, kita mengawini, kita berhubungan suami-istri dengan cara yang sah, dengan cara kawin atau nikah. Kita tidak boleh berhubungan suami istri dengan saudara sendiri (incest,red) karena itu akan berakibat pada merusak keturunan.

"(Raping, incest, and having a fair, in my opinion, are not a rational attitude as a man. The right which is given by Allah SWT, we get married, we have a husband-wife relationship by using the legal way, a marriage. We may not have a sexual relationship with our own brother (Incest, red) because it will cause on damages of descendents).

But *Ulama' Pondok Pesantren* have different opinions forcing of the sexual relationship on a legal marriage (*The marital rape*). Majority of *Ulama' Pondok Pesantren* state that they do not agree with the model forcing of conducting the husband-wife sexual relationship. Even, it can take to the model of raping. AST states that:

"Antara suami-istri itu harus ada saling pengertian. Hal semacam kekerasan sebelum berhubungan intim kan sama saja dengan pemerkosaan. Sehingga alangkah naifnya kalau suami memperkosa istrinya, sehingga harus ada saling pengertian.

(Between the wife and the husband must have understanding each other. Something like a violence before having an intimate relationship is the same as the raping. So that, how naive it is if the husband rapes his wife, so that there must be understanding each other)."

Including the forcing of having the sexual relationship which is prohibitted is the forcing in the forms of the styles of conducting a sexual relationship. AST states that:

"Sekali pun ada ayat bahwa "Istrimu adalah Sawah Ladang Bagimu", tetapi saya tidak sependapat kalau pemaksanaan gaya, harus ada saling sepakat. Kalau ada kesepakatan itu sah-sah saja asalkan sesuai dengan garis norma agama.

"(Although there is a verse stating that 'Your Wife is the Field for You", but i do not agree with the forcing of style in conducting the sexual relationship. There must be an agreement. If there is an agreement, it is legal provided that it is in concord with the religious norms)."

However, there are also *Kyai* and *Nyai* who allow of forcing the wife the wife does not want to be invited to have the sexual relationship. *Kyai* and *Nyai* do not agree if the forcing is categorized into the raping in a household life. MST states that:

> *"Kalau pemaksanaan itu membahayakan maka tidak boleh, tetapi kalau hanya dalam keadaan istri ogah-ogahan ya boleh. Kalau tidak membahayakan tetap boleh memaksa hubungan seksual".*
>
> *"If the forcing endangers, it is foridden, but if it is only when the wife feels lazy, it is alright. If it does not endanger. It is allowed to force their relationship.*

The statement of MST shows that there is still an opportunity of doing *the Marital Rape*. But, majority *Kyai* and *Nyai Pondok Pesantren* do not agree with *the Marital Rape*. They propose opinions that the sexual relationship must be conducted sincerely and it must be based on the feeling of love. It is not based on the forcing and violence because it definitely causes trauma and feeling injured towards the wife, even it may cause the frigid attitudes. Therefore, the violent deeds towards the wife is against the Islamic concepts which suggested to conduct well and honor the wife deeply. Imam Ali bin Abi Tholib states that:

> *"Tidak memuliakan perempuan kecuali orang-orang yang mulia dan tidak menghinakan perempuan kecuali orang yang hina". Dan termasuk pemulian terhadap perempuan adalah menghormati hak seksualnya dengan tidak melakukan pemaksanan dan kekerasan kepada istri."*
>
> *"(It does not honor the wife deeply except the noble man and it does not insult the wife except the contemtible man. And including the magnificence towards the woman is respecting the woman's sexual right and does not do any forcing and violence towards the wife).*

E. Sexual Orientation

The issue of the sexual orientation among *Pondok Pesantren* seems to focus on the heterosexual relationship. The issue outside

the heterosexual relationship becomes an endless and long debate among *Ulama' Pondok Pesantren*. There are particular terms about the issue such as *Khunsya Musykil* (Effeminate homosexual), *Mutarojilah* (A Masculine woman), *Mutakhonitsin* (A feminine man, *Waria* or *Wadam*), *Mushohaqoh* (Homo/lesbi), *Nikah Al-Yadd* (Masturbation) and other terms.

According to some *Ulama'* , Heteroseksual has existed since the first human namely Prophet Adam bore until the end of the human life. SNT states that:

> *"Itu sudah sejak pertama manusia, Nabi Adam dengan ibu hawa di Surga, bahkan justru definisi dari nikah itu "An-nikahu Syari'atun Qobilatun Wa Syariatun Muta'akhiratun. An-Nikahi Al-Jima" (Nikah itu merupakan syareat para pendahulu dan syareat bagi orang diakhir zaman. Maksud nikah adalah hubungan seksual."*
>
> *"(It has existed since the first human namely Prophet Adam and mother hawa in the heaven. Even, the definition of the marriage "An-Nikahu Syari'atun Qobilatun Wa Syariatun Muta'akhiratun. An-Nikahi Al-Jima" (The marriage is the Islamic laws of the predecessors and the Islamic laws of the end of period. The intention of Marriage is a sexual relationship).*

On this view, SNT categorizes homo and lesbi as the sexual deviation which must be taken into the righr way. SNT staes that:

> *" Harus kita sibukkan dengan hal-hal lain, kita beri nasehat (Mauidhoh) yang bijaksana supaya sibuk dengan hal-hal yang positif. Waria dan Lesbi itu karena belum ada ilmunya, kalau sudah ada nanti kan ada pengeremnya."*
>
> *(We must incitewith the other matters. We give advise (Mauidhoh) which is wise in order he becomes busy with positive matters. Mutakhonitsin (A feminine man or Wadam) and Mushohaqoh (Homo/lesbi) occur because he does not have the knowledge. If any, there will be a brake).*

The similar thing also proposed by ZMF. He states that the relationship between the man and the man or the woman and the

woman are the deviating relationship from the natural tendency. So, *Khunsya* (Effeminate homosexual) or *Mutakhonitsin* (A feminine man, *Waria* or *Wadam*) constitute a sexual deviation and a sexual disease. ZMF states that:

> *"Ada yang nggak stabil, ada something wrong. Ada dua penyebabnya yaitu sakit diluar kemampuan dia, alami, mungkin karena gennya, hormonnya dan lainnya dan ada yang karena disengaja, ini yang dipolakan pikirannya, dia mempolakan diri sebagai perempuan. Kategori pertama harus diobati, sedang kategori kedua itu yang dosa hukumnya."*
>
> *"(There is something rather stable, there is something wrong. Thre are two causes namely a diseases outside the person's ability, natural disease may be because of the gen, hormon, and other causes. And, there are intentinally made. It is the mind which is patterned, he pattrns himself as a woman. The first category must be healed up, while the second category, the law is sinful)*

TQM confirms that the law of Lesbian dan Homosexual is absolutely *Haram* (Prohibitted, forbidden) without any dispensation. However, according to TQM, they must be behaved humanly. TQM states that:

> *"Kita tetap memperlakukan mereka secara manusiawi. Yang kita musuhi adalah perbuatanya bukan orangnya. Jadi harus dibedakan antara orang dengan tindakannya supaya mereka bisa kembali sadar dan itu ada terapinya yakni dengan cara mengurangi hormonnya dan dibina spiritualnya, Insya Allah bisa sembuh."*
>
> *"(We have to behave them humanly. What we oppose is the deeds, not the persons. Thus, it must be differed between the person and the deeds in order they can be aware and there is the theraphy namely by reducing the hormon and the spirituality is guided, Insya Allah can be healed up).*

HSN also states that the normal sexual orientation is a man loves a woman and vice versa. So, the homosexual attitude, according to HSN, is clearly a sexual deviation. Therefore, according to HSN, there must be *Amar Ma'ruf Nahi Munkar* (Engaging into

goodness and prohibitting of doing a disavowal) by using the wise way namely *Bil Hikmah Wal Mauidhoh Hasanah* (by using the wise method and the good advice) until using the feasible ways which enable them to change the deviating attitudes.

From the statements of *Kyai* and *Nyai Pondok Pesantren,* it can be concluded that the legal sexual orientation and accordance with the Islamic Laws is the heterosexual orientation between the man and the woman in a certain marriage bound. Outside the legal sexual orientation is homoseksual (The sexual orientation between the man and the man), Lesbian (The sexual orientation between the woman and the woman) dan Zoofilia (The sexual orientation of doing the sexual relationship with an animal), Nekrofilia (The sexual orientation of doing the sexual relationshipwith a corpse), Incest (The sexual orientation of doing the sexual relationship with veryclosed relatives), Wife-swapping (The sexual orientation of exchanging the wife) are the deviation of the sexual orientation which is prohibitted by the Islamic laws and categorized into *Fakhisyah* (The despicable deeds) which are included into the sanction of criminal laws.

Whereas for the woman or the man who has two genitals, so according to *Kyai* and *Nyai* who become the informants, is allowed to do a medical operation to make th one of the genitals which is chosen become in which it is based on the analysis of the medical experts. The statements of *Kyai* and *Nyai* about the medical operation to confirm the genitald for those who have double genitals is in accordance with the establishment of two religious-social organization in Indonesia namely *Muhamadiyyah* on *Fatwa-Fatwa Tarjih* and *Tanya Jawab Agama* volume I and *Nahdhotul Ulama'* on the great Council or Muktamar XXVI in Semarang June 5-11, 1979. The essence, the two religious-social organiztion allow the medical operation of confirming genitals, but prohibit or forbidden the change or replacement of genitals.

While the man's attitude which is similar to the woman or in converse is also forbidden on the basis of Islamic laws. TQM, for example, states that:

> *"Khunsya yang alat kelaminya double itu ada dua. Yang secara biologis dia memang Musasysbihah (Tidak jelas jenis kelaminnya, apa laki atau perempuan). Dalam hal ini para Fuqoha' membolehkan operasi untuk menyempurnakan. Akan tetapi ada orang yang sebenarnya alat kelaminya laki-laki, tetapi prilakunya seperti perempuan atau sebaliknya."*
>
> *"(Khunsya (Effeminate homosexual) who has double genitals is divided into two categories. Biologically, he is really Musasysbihah (there is no clarity of the genitals, female or male). In this case, Fuqoha' (The experts of Islamic laws) allow the medical operation to complete the genitals. However, there is a man who has the man genitals, but the attitude is like a woman or in converse).*

It is related to *Onani* (masturbation), the law of *Onani* (masturbation) according to *Ulama'* is *Tafsil* (Explained in detail) into some categories. If the *Onani* (Masturbation) is conducted by the husband or the wife, so the law of it is allowed. If the *Onani* (Masturbation) is conducted by youth to have fun, so the law is *Haram* (Forbiden, prohibitted). Meanwhile, if because of the worry of committing adultery, so the law of it is *Markus* (something that the avoidance of which yields merit or *Pahala* but the performance of which is not sinful or *Berdosa*). MMN also states that the law of *Onani* (Masturbation) is *Makruh* (something that the avoidance of which yields merit or *Pahala* but the performance of which is not sinful or *Berdosa*) because it can cause *Dhoror* (Danger or damage). According to MMN, Al-Qur'an and Hadits command to *Ghoddul bashor* (Bear any view) and guard *Ahshon lil farji* (Any sexual lust). If there is a youth has extremely great sexual lust, according to MMN, he should be suggested to get married soon or if he has not been ability to gat married, so it is better for him to do *Puasa* (doing fast or bearing eating and drinking from the very early morning or *Fajar* time to the evening or Maghrib time)

or conducting lot of physical activities such as doing sport. But, according to AST, Masturbation or *Onani* includes the category of sexual deviatian which must be healed up by carrying out many advantageous or positive activities.

While, TQM proposes the opionions that Masturbation (*Onani*) may not be conducted as a habit, but it must only do at a certain time because the worry of committing adultery (Melakukan Zinah), so by the argumentation *Akhufuddhorurain* (Choosing the easy impact from the two dangers or damages), the law of Masturbation (*Onani*) is allowed as a husband or a wife who is left by their couple to have study at foreign countries. According to the religious law, it is better is to be shifted to other activities. TQM firmly states that:

> *"Sebaiknya bisa dialihkan dengan kegiatan-kegiatan lain yang lebih mulia seperti membaca al-Qur'an, puasa dan lainnya."*
>
> *"(It should be better to be changed to other activities which are more sublime).*

F. Sexually Transmitted Disease (STD) and Human Immunedeficiency Virus (HIV/AIDS)

Penyakit Menular Masyarakat (PMS) or internationally known as Sexually Transmitted Diseases (STD) is a diseases which is caused by infection, then followed by inflammation and infected through a sexual relationship. In the beginning of its dissemination, it uses a term of *Penyakit Kelamin* (Veneral Diseases/VD). PMS/STD constitutes a prominent matter in the reproductive health. The infection of PMS/STD is generally caused by the highly risked-sexual deed. The essence of the highly risked-sexual deed is the attitude of changing sexual partner either pre-marital or extra marital. The appearance of the sexual deed comes from the existence of social changes in the middle of society in which the permissive attitudes of the sexual deed happen because of frailty of social control and other factors such as: the lack of sexual knowledge, the

influence of social pressure, and the case of accessing media which enable the appearance of permissive attitudes like pornography and *XXX* Website of Internet.

Some PMS/STD which can be found in the middle of society are Syphilis, Gonorrhea (GO), *Herpes Progenitalis*, inflamed vagina, acute fulminate hepatitis, and the famous diseases of PMS/STD namely *Human Immune deficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS)*. According to Mundiharno's research (1999) towards truck drivers inter-provinces shows that about 50 % of respondents are ever contaminated PMS/STD. Generally they are infected Gonorrhea (GO) and Syphilis as a result of their deviated sexual deeds. The same things are also undergone by *Anak Buah Kapal/ABK* (Crews of ships). Ana Dina Patriani and Rosa Jaya (1998) explain that *Anak Buah Kapal/ABK* almost always have sexual relationship when the ships have anchor. They also state that it is infected by PMS/STD constitutes the common disease that they are undergone.

The absolutely serious disease of PMS/STD in Indonesia and even in the world is the diseases of Human Immune Deficiency Virus/Acquired immune Deficiency Syndrome (HIV/AIDS). Indonesian government has formed *Komite Penanggulangan AIDS* (KPA) or Committee of HIV/AIDS Prevention from the level of Centre government, the level of Provincial government, the level of County government. It shows that HIV/AIDS constitutes a disease of PMS/STD which becomes the primary priority of Indonesian government in preventing and overcoming its dissemination. AIDS is a syndrome which drop off or paralyze the system of immunity to a disease. AIDS is caused by Human Immune deficiency Virus (HIV). It is the virus that can attack and drop off the system of immunity to a disease. According to the latest data, HIV/AIDS have spread all provinces in Indonesia, no province is free from HIV/AIDS.

According to data which are written by Dr. Rosmini Day, MPH. (2005), that since 2000 Indonesia is included on the category of *Low Prevalence Epidemic* with *Concentrated Level of Epidemic* is in DKI Jakarta, Papua, Riau, Bali, West java, and East Java. There are three provinces in which *HIV Prevalence* goes increasing, namely West Kalimantan, North Sumatra, and North Sulawesi. Estimation of *Orang Dengan* HIV/AIDS or *Penderita* HIV/AIDS (ODHA) in 2002 is 90.000-130.000 ODHA. It is also based the estimation, the people who are sensitively infected HIV/AIDS are *Pelanggan Pekerja Seks Komersial (PSK)* and the partner or the consumers of prostitution girls and the partner, the consumers of drugs by injection, *Waria Pekerja Seks Komersial* or prostitution transvestite homosexual, the consumers of prostitution transvestite homosexual, and the doers of homosexual. It means that a wife whose husband becomes the consumers of prostitution girls is sensitively infected HIV/AIDS or a husband whose wife becomes the consumers of prostitution girls is sensitively infected HIV/AIDS.

According to Dr. Suriadi Gunawan (on Elga sarapung, dkk., 1999:199) states that Indonesia enables the dissemination of HIV/AIDS speedily because of the following factors: a) Indonesia has the sexual industries which are so wide and in varieties, b) In Indonesia, the prevalence of *Penyakit Kelamin* (Veneral Diseases/VD) is very high, c) In Indonesia, the awareness of using condom in conducting a sexual relationship is still very low and concerned, d) Urbanization and migration of inhabitants are very high or progressive, e) The increases of the sexual relationship in the way of pre-marital and extra-marital, f) The injection practice and sterilization of medical equipments which are not appropriate with the medical standard, and g) The movement of people from and to foreign countries goes on in free.

Kyai and *Nyai* of *Pondok Pesantren* (Moslem boarding schools) propose different opinions in terms of HIV/AIDS. Some *Kyai* and

Nyai state that attitudes towards the people infected of HIV/AIDS are the same as attitudes towards the common people. As long as the infected people of HIV/AIDS do not threaten or endanger to other people, the friendly and kindly attitudes should be taken into deeds. HSN, one of the informants or respondents of the research states that:

> *"Ya, sebagaimana sikap kita dengan orang lain. Sepanjang tidak membawa madhorot atau bahaya, kita tetap harus memperlakukan mereka sebagai manusia. Artinya pergaulan kita seperti biasa sepanjang tidak ada madhorot atau bahaya".*
>
> *"(It is like our attitudes towards other people. As long as the infected people do not threaten or endanger to the other people, the friendly and kindly attitudes should be taken into deeds).*

However, if the infected people endanger the common people, government must make a policy to separate them, not to isolate them. The intention is to heal them up intensively." In line with HSN's statement, MMN also states that:

> *"HIV/AIDS merupakan penyakit yang berbahaya sehingga perlu dilakukan tindakan preventif dan persuasive. Kalau memang HIV/AIDS bisa menimbulkan bahaya, maka kita harus membedakannya, bukan mendeskriditkannya karena itu memang penyakit menular sesuai dengan kaidah Dar'ul Mafasid Muqoddamun 'Ala Jalbi Masholih atau menolak kerusakan itu lebih didahulukan daripada menarik kebaikan."*
>
> *"(HIV/AIDS is absolutely dangerous disease, so it needs to take preventive and persuasive action. If HIV/AIDS really threatens or endanger to the other people, we have to differ, not to discriminate them because HIV/AIDS is really an infected disease in concord with the principle of Dar'ul Mafasid Muqoddamun 'Ala Jalbi Masholih or preventing the damage has to be taken in priority rater than taking the benefits).*

RY firmly states that the infected people of HIV/AIDS do not need to be discriminated, even they need to be sincerely loved. RY proposes opinion that the infected people of HIV/AIDS do

not contaminate HIV/AIDS by *Ngobrol* or just talking. Besides, according to RY, the infected people of HIV/AIDS do not always caused by prostitution deeds, but it often caused by injection needles, the descendant hereditary factor, and other causes. It is based on RY's opinion, people should stay behaving the infected people of HIV/AIDS humanly and in concord with the common human courtesy.

While, it is related to the matter of the allowance or the cancellation of marriage for the infected people of HIV/AIDS, most respondents, HSN, MMN, ZMF, AST, and SNT state that HIV/AIDS can become a reason of the allowance of *Fasakh An-Nikah* (The cancellation of marriage). HSN states that each side, the bride or the bridegroom, can cancel the marriage bound because HIV/AIDS can be categorized as the disease which includes on *Aib Nikah* (The marriage disgrace).

Ulama' (The religious figure of Islam) propose an argument about the allowance of the marriage cancellation is that HIV/AIDS is equalized with the diseases which can cancel a marriage according to Islamic laws. On the Islamic literatures, it is mentioned some diseases which can cause a marriage may be charged by one of the sides (a husband or a wife) at the court in order the marriage can be cancelled. Some diseases that can cancel the marriage for a woman are if the woman has *Penyakit Gila* (Insanity), *Penyakit Baros/Penyakit Kusta* or *Judzam* (Leprosy), *Rotak* (The vagina is closed by a piece of meat), and *Al-Qorn* (The vagina is closed by a piece of bone). While, Some diseases that can cancel the marriage for a man are if the man has *Penyakit Gila* (Insanity), *Penyakit Baros/Penyakit Kusta* or *Judzam* (Leprosy), *Al-Jabbu* (The penis is cut), and *Al-Unnah* (The sexual impotancy) (Abi Syuja', t, th:). MMN also states that:

> *"Bisa, jangankan HIV/AIDS orang yang tidak mempunyai kemampuan seksual juga bisa digugat ke pengadilan. Itu artinya suami atau istri*

berhak untuk menggugat cerai di pengadilan dan pengadilan harus mangabulkan perceraian ini karena menimbulkan bahaya sesuai dengan kaedah La Dhororo Wa La Dhirroro atau tidak membahayakan diri sendiri dan orang lain.

"(It can be. The people who do not have the sexual capability can also be charged before the court, so are the infected people of HIV/AIDS. It means that a husband or a wife has the same right to do a divorced charge and the court should accept and fulfill the divorced charge because it can threaten in accordance with the principle of La Dhororo Wa La Dhirroro or it does not endanger himself and other people) .

While, TQM also states that HIV/AIDS can be a reason of the marriage cancellation because HIV/AIDS includes the dangerous disease. But, if the dangerous disease can be healed up or treated medically, so it does not cancel the marriage. RY and SY agree that it has to be looked for another alternative or solution outside *Faskh An-Nikah* (The marriage cancellation) for the infected people of HIV/AIDS. Yet, RY and SY do not firmly propose an alternative or solution outside *Faskh An-Nikah* (The marriage cancellation) because HIV/AIDS has not so far found any medicine or any therapy to heal the infected people of HIV/AIDS up.

G. Information and Sexual Education

The matters of sexual information and sexual education for adolescents in Indonesia still become an extremely serious problem. Most people still consider that the sexuality matter is a very taboo matter to be talked. The information, comprehension, and awareness of embodying a reproductively-healthy life are still so far to get. On the other sides, the adolescents themselves undergo physical changes quickly, but the access to attain the sexual information is relatively restrictive or even closed at all. Consequently, most adolescents gain the mistaken information I n terms of the sexuality matter. The sexual information and the sexual education are intended to extend the access of getting right

information for the adolescents about the reproductive health and the adolescent sexuality. The right and honest information of sexuality will make the adolescents become more aware towards a must of responsibility on their sexual deeds and reproductive health.

Government actually takes care of the reproductive health of adolescents. It is shown by the announcement a program, namely *Puskesmas sebagai Klinik Peduli Remaja* (The Local Government Clinic as the Clinic of Adolescent Cared-Centre). However, the access of the adolescents towards the centre of community service is very low and apprehensive. Data show that the arrangement of rooms, services, the white-white uniform of the medical officers, the limited time of services, and the unkindly and normative attitudes of the medical officers make the adolescents feel reluctant to visit the centre of community service. As the results, the centre of community service which is provided by government does not accessed or utilized well and properly by the adolescents. Another reason is the restrictive type of services of *Puskesmas* as an institution which provides the basic service of health in the level of *grass roots* (The common people).

Puskesmas so far has not been ability to fulfill the service of reproductive health which is needed by the adolescents. Cases of the sexual violence which is not wished (Pregnancy outside a formal marriage) become a discrete obstacle to be overcome wisely in the forms of the service (SKH Suara Merdeka, Senin, 14 M aret 2005).

The implication is many adolescents look for the information of HRP by their own ways either by visiting Internet centre, reading magazines, and hunting other information or even by watching pornographic movies. M. Widjanarko (1999: 29-50)on the research about the sexuality of adolescents in Yogyakarta states that in Yogyakarta, the sexuality knowledge of adolescents, PMS/STD, and HIV/AIDS is still relative low. Some adolescents

even release their sexual motives by conducting masturbation, doing sexual relationship outside the formal marriage, and even some adolescents are forced to do the homosexual and lesbian sexual relationships. To deal with the sexual cases, a family institution and the religious institution play very significant roles to afford knowledge with respect to the sexuality, the right and the reproductive health which are right, healthy, and safe.

The matter of sexual information and sexual education still become a serious debate among *Ulama'*. The debate goes on the need of adolescent to be afforded the sexual knowledge or let them know naturally by themselves. The importance for *Ulama'* is giving them provisions of the basic guidance of good ethicsm so that the adolescents can be responsible because they know what the good deeds and the bad deeds are, what the allowed deeds and prohibited deeds are, etc.

Some *Ulama'* agree about the significance of the sexuality education for children and adolescents. TQM, RY, and AST, for example, state that the sexuality education may be afforded to children since they are 3 or 5 years-old. The requirement is materials of the sexuality education are in accordance with their logic, delivered gradually, and the delivery of the sexuality education avoids the usage of vulgar and obscene languages. TQM states that:

> *(Boleh tetapi sesuai dengan porsi umurnya. Anak saya laki-laki masih TK, ia kalau bermain denagn anak perempuan, saya pesan agar tidak di dalam rumah tetapi di alam terbuka …… Kalau nonton sinetron, ada adegan ciuman maka sayajelaskan bahwa itu hanya boleh untuk ibu-bapak, artinya tidak boleh dipraktekkan atau dilakukan diluar ikatan perkawinan. Metodenya bertahap sesuai dengan umur, tetapi kalau secara rinci saya tidak punya konsep, jadi saya secara alamiah saja membimbing anak saya dalam hal ini)."*
>
> *"(The sexuality education towards children may be conducted, but it must be in concord with the children' age. My child is still kindergarten.*

If he plays with his female friend, I always order him to not conducting two by two inside the home but playing outside home or in the yard. …… If he watches a certain movie (Sinetron), then there is a kissing scene, so I explain that it may only be done by mother and father. It means that it may not be conducted by anybody outside the legal marriage. The methods are gradually in accordance with the children' age, but in detail I have no the concept, so i, in this case, do it naturally in guiding my child).

Even according to AST, for the recent time, the sexual education should be afforded to children since the age of elementary school. It needs because recently there are so many programs of television which are only appropriate to the adult people but the programs are watched by the children. Besides, recently the children tend to have the cycle of biological maturity, such as menstruation, more quickly than the children in the past. About 10-20 years ago, the menstruation occurs when the children go to the age of adolescents, but recently, the children of the age of elementary school can have menstruation. So according to AST, the sexual education should be notified earlier to the adolescents. In terms of the methods, AST suggests to use of pictures, symbols, LCD, watching television program of the sexual education, etc.

In line with AST, RY also agrees that the sexual education is afforded since as early as possible so that the children do not feel embittered and find information about the sexuality through the mistaken ways. In terms of the methods, RY suggests to use of educative narratives/stories, discussions, dialogues, pictures, symbols, LCD, watching television program together of the sexual education, and other methods which are adjusted with the grade and the development age of the children.

MST also agrees about the sexual education, but it should be afforded to adolescents when they are Senior High School age, minimally at the first grade of Senior High School (It is about 15-16

years-old). MST does not agree if the sexual education is delivered to the children under the age of Senior High School, minimally at the first grade of Senior High School (It is about 15-16 years-old). MST states that:

> *"Saya setuju dengan pendidikan seksualitas, tetapi disampaikan dengan bijaksana dan umur tertentuseperti siswa SMA kelas satu. Kalau masih anak kecil dikhawatirkan akan dicoba atau dilakukan."*
>
> *"(I agree with the sexual education, but it should be delivered wisely or when they have the age of Senior High School, minimally at the first grade of Senior High School. If it is afforded to the small children, it is worried they will try or practice it) .*

While, HSN does not agree with the sexual education towards the children or the adolescents. In this case, HSN emphasizes more towards the significance of the education of good ethics for the children or the adolescents because the matter of sexuality will be known by the children or the adolescents naturally when they go adult. HSN states that:

> *"Kalau anak-anak yang belum sampai umurnya, itu menurut saya yang lebih baik adalah pendidikan akhlaq. Jadi kalau dia salah penerimaan, maka akan muncul imajinasi-imajinasi dalam pikirannya dan itu bisa mempengaruhi perilakunya. Menurut saya itu lebih banyak madhorotnya. Jadi kalau dia harus mengerti, maka biar dia mengerti secara alami.*
>
> *"(Towards the children who have not had enough age, from my point of view, it is better for them to be afforded the education of attitude (Akhlaq). So, if they misunderstand or misreceive, it will appear pornographic imagination on their minds and it can influence their deeds. In my opinion, it will take more disadvantages than advantages. So, if they should comprehend, let them know naturally by themselves).*

In line with HSN, MMN does not also agree with the sexual education towards the children or the adolescents. He more agrees with the religious or moral education in which in it, it can be notified about the sexuality matter. The minimal age for the adolescents is as the same level as the Senior High School age. MMN states that:

"Kalau saya dari dulu bertanya-tanya, mengapa istilah pendidikan sex, mengapa bukan tidak dengan istilah pendidikan remaja, pendidikan moral, pendidikan agama dan lainnya yang di dalamnya ada informasi hal-hal yang berhubungan dengan seksual, menstruasi dan lainnya. Istilahnya harus diubah dengan istilah yang bagus. Hal ini dilakukan ketika anak menjelang dewasa, tidak bisa untuk anak SD atau SMA, minimal siswa kelas satu SMA. Dalam hukum Islam sudah dijelaskan bagaimana itu haid dan Iltiqoul Khitanaini (Hubungan seksual). Jadi, sebenarnya dalam Fiqh-pun sudah mencakup pendidikan seks."

"(For long time, I ask myself, why the term is the sexual education, why it is not used the term of the adolescent education, the moral education, the religious education and other terms in which in it, there is information which relates to the sexual matter, menstruation, and other issues. The term should be changed by using the good term. It should be done when the children almost go adult, not for the children of elementary schools or Senior High Schools, minimally when they are at the first grade of Senior High Schools. On the Islamic laws, it has been explained about what Haid (Menstruation) is, what Iltiqoul Khitanaini (Hubungan seksual or the sexual relationship) is. So, actually on the Fiqh, it has been covered about the sexual education).

H. Family Planning (*Tandhimun Nasal*)

Managing the birth range sometimes becomes imperative to do because of many factors. One of the ways is by conducting *Keluarga Berencana* or the Family Planning. *Keluarga Berencana* is intended as the way to plan a family. It may include when wants to get children and how many children who are needed by the husband-wife couple. If the couple decides to postpone pregnancy or manage the birth and the amount of birth, so it can be done by *Keluarga Berencana* through some following ways. According to A. August Burn, dkk. (t.th.: 101), there are five methods that can be chosen to postpone pregnancy. First, *The Barrier Method*. It is conducted by impeding the meeting of ovum of female and sperm of male. Second, *The Hormonal Method*. It is conducted by

postponing pregnancy by preventing ovary of releasing the ova, preventing the sperm of male hard to meet the ova, and guarding the womb stays sterile and not becoming the place of fertilization. Third, *The Method of IUD*. It is a device which is lain inside the womb to hamper the fertilization of the sperm and the ova. Fourth, *The Natural Method*. It is by doing the sexual relationship occasionally or from time to time which is based the agreement of the husband and wife. Fifth, *The Permanent Method*. It is conducted a medical operation to stop the opportunity of males and female to be able of having children.

Another method of postponing the pregnancy is using the *Contraception Method*. On the contraception method, the modern bio-medical science has succeeded of designing the new techniques or methods of contraception. The scientists also conduct lot of researches to make the contraception method become perfect. The contraception method can be classified as *The Permanent Method* and *The Impermanent Method*. The permanent method is the method which has been steady, and the impermanent method is the method which has not been steady. What includes the impermanent methods are *Metode Semprotan* or the spray method (DUS), *Metode Kalender* or the rhythm method (the Calendar method), the broken-sexual relationship (*'Azl*), *Metode Pelemahan Sperma* or the method of weakening sperm (Suppository, the foam tablet), *Metode Progestogen* (The usage of pills), *Metode Kondom* (The usage of condom), *Metode Diafragma* (Diaphragm), *Metode Progestogen* (The injection method), and the pill method. While, what includes the permanent methods are *Metode Vasektomi* (The vasectomy method), *Metode Tuballigation* (The medical operation of tying the ovum line), *Metode Hisirektomi* (The medical operation of womb withdrawal), all permanent methods which are mentioned above cause barrenness. The permanent methods are conducted by surgical operation. If a couple chooses the Method of Hisirectomy

or the medical operation of tying the ovum line as the contraception method and the male chooses the method of vasectomy, so, both permanently can not reproduce or have pregnant biologically. It needs to be emphasized that the method of total Hisirektomy which constitutes the womb withdrawal may not be made as a choice for most women to postpone the pregnancy. The method needs a procedure of extremely surgical operation, and it constitutes an absolutely serious problem.

The issue of contraception still becomes a debate among the religious scholars. Most religious scholars only allow *Keluarga Berencana* to be conducted through the impermanent method, such as the usage of condom. While, thepermanent methods are strongly prohibited, such as the method of Vasectomy and Tubectomy. Islam recognizes the tradition of managing pregnancy after the era of Prophet Muhammad SAW is the '*Azl* method (*Metode Senggama Terputus*). The method is done by spilling the sperm of male outside the womb. The method is well-known as the method of broken-sexual relationship. The principle which is contained at *Metode Senggama Terputus* is preventing sperm to get in the womb, so that the fertilization of the ova is almost impossible to happen. It is based on some considerations, the '*Azl* method is the most reasonable method of conducting *Keluarga Berencana*. However, what *Keluarga Berencana* is suggested, forbidden, or it is only a solution of a certain situation, the religious scholars have different opinions about it.

TQM, RY, ALF, MMN, AST, MHJ, SNT, HSN, and ZMF state that *Keluarga Berencana* has to be decided through the deeply discussion between a couple of wife and husband. TQM states that:

> *"Pengaturan kehamilan itu dimusyawarahkan, termasuk jumlah anak karena itu kepentingan masing-masing orang berbeda kemampuannya. Misal ada orang yang ingin mempunyai anak tiga. Dia merasa mampu …. Kalau sudah tidak sanggup karena sakit itu tindakan Dholim.*

Harus dimusyawarahkan demi kebaikan dan kemaslahatan bersama. La Dhororo Wa La Dhiroro (tidak membahayakan diri sendiri dan orang lain) termasuk istrinya."

"(Controlling birth should be discussed including how many children are because the interest of everyone is different in the forms of capability. There is a person who wants to have three children. He feels well to do …. If it is not capable because of a certain disease, it is a Dholim or despotic deed. It should be discussed for the sake of meritorious action and advantage. La Dhororo Wa La Dhiroro (It does not endanger himself other people) including his wife).

MMN adds that the matter of *Keluarga Berencana* is a private matter and everybody may determine how many children a couple wants to have as long as it does not take any danger. MMN states that the suggestion to increase the amount of children is in accordance with what Prophet Muhammad SAW states:

"Saling nikah dan saling berketurunan karena Aku (Muhammad) bangga dengan kamu semua (yang jumlah banyak) dibanding umat Nabi lainnya pada hari Kiamat)." "Tanakahu tanasalu fainni mubahin bikumul umam yaumal qiyamah"

"(Get married each other and get more generations because I'm proud of you all (the large amount) be compared with the members of community of other Prophets on the Judgement day)".

Furthermore according to MMN, basically a person gets married is to get more children but the qualified children. However, if many children may cause the danger, so it is better to limid the amount of children.

TQM, RY, and ZMF state that they do not agree with the intervention of State in the matter of *Keluarga Berencana*, moreover if the State orders the citizens massively to conduct *Keluarga Berencana*. They propose opinions that:

"Keluarga Berencana harus dipahami dalam konteks menghindari kekerasa. Tetapi prakteknya salah dan banyak kritik. Keluarga Berencana yang penting tidak hamil, tetapi dampak Keluarga

Berencana itu menyebabkan istrinya tambah gemuk, sakit-sakitan dan sering pusing. Pemerintah itu salah karena memahami konsep Keluarga Berencana berarti yang penting tidak hamil dan penduduk tidak tambah dengan tidak memperhatikan kesehatan reproduksi. Mestinya kesehatan reproduksi dipertimbangkan. Jadi, Negara kalau terlalu ikut campurtangan dalam penentuan kelahiran, saya tidak sependapat,"

"(Family Planning should be understood on the context of avoiding the violence. But the practice is mistaken and appears lot of criticism. Keluarga Berencana is understood not to be pregnant, but the side effect of Keluarga Berencana causes the wife becomes fatter, sickly and often dizzy. The government is mistaken because comprehending the concept of Keluarga Berencana means that not getting pregnant and the inhabitants do not become more by not paying attention to the reproductive health. It needs to remember that the reproductive health should be considered and thought deeply. So, if the State so much intervene in determining the child birth, I do not have the same opinion).

RY also proposes opinion that he allows if government's intervention only gives suggestion as long as the government does not force the citizens systematically. RY also states that:

"Kalau intervensi Negara hanya sebatas anjuran, menurut saya silahkan saja seperti di Cina, misalnya. Kalau satu anak, maka semuanya ditanggung oleh Negara. Tetapi anak kedua dan seterusnya, maka Negara lepas tangan. Itu sebuah metode. Itu silahkan saja, tetapi kalau memaksa Keluarga Berencana itu tidak boleh."

"(If State's intervention only gives suggestion, in my opinion, it may be alright as in Cina, for example. If only a child, it is granted by the State, but the second and next children, so the State does not intervene. It is only a method. It's alright, but forcing to conduct Keluarga Berencana, it may not be allowed).

In line with RY, HSN states that Government has right to suggest *Keluarga Berencana* in context of creating meritorious actions because the government feels afraid not having capability

of affording maximal services towards the citizens because of great amounts of citizens. Hence, the government has right to suggest *Keluarga Berencana* massively for the sake of the citizens' meritorious actions, but it may not force. ALF adds that *Keluarga Berencana* is only the government's program. The citizens may follow it or not follow it. In reality, the citizens who have many children are also alright.

The statements of MMN, ALF and AST can be understood in the context of *Keluarga Berencana* which is so far socialized by the government's New Era. The government at that time socialized *Keluarga Berencana* as a limitation of the amount of birth with the main slogan "Dua Anak Cukup (Two children is enough)." Therefore, the perception of *Keluarga Berencana* must be changed and replaced by the Program Implementation of Action of ICPD which relates to four main points. First, in order a couple or a person privately can determine freely and responsibly in controlling the amount and the birth range which will be possessed. Second, in order they gain information and guarantee to realize their wants. Third, granting them to attain information about the choices of the existing methods of *Keluarga Berencana.* Fourth, providing effective and safe methods completely for a couple or a privately person who wants to follow *Keluarga Berencana* program. Besides, it is also stressed about the significance of the demography education and *Keluarga Berencana* program properly and appropriately in order they can do responsibly towards what they want and the family and society also want.

With regard to the choice of contraception devices, ZMF, HSN, SNT, RY, and TQM also require the existence of agreement between the husband and wife without doing any force, not appearing any disadvantages, and not causing any damages of reproductive organs of each right-the wife and the husband, not closing or

impeding the reproductive process permanently. The informants or respondents do not explain in detail about the contraception devices, but the important is fulfilling the above principles. MHJ clearly states that he does not agree if someone follows *Keluarga Berencana* program by cutting off a certain part of reproductive organs as the methods of Vasectomy and Tubectomy.

TQM also agrees that the choice of contraception devices is conducted through a deeply discussion. Even, TQM emphasizes the husband to use the contraception devices because it is more healthy and can reduce the reproductive burden of a wife. TQM also states that:

> :*Keluarga Berencana yang adalah dengan memakai kondom, Insya Allah tidak ada efeknya. Kalau saya, penentuan kelahiran dan alat kontrasepsi itu dimusyawarahkan. Bahkan kalau saya, sebaiknya laki-laki condong memakai kondom dan Vasektomi karena itu lebih sehat."*
>
> *"family planning which is conducted well is by using condom, God willing, there will not be any side effect. If I am, the choice of child birth and the contraception devices have to be discussed deeply. Even, if I am, it is better for man (the husband) to use the contraception devices, not woman (the wife). It's a pity for the wife. Usually, the husband tends to use condom because it is safer.*

I. Polygamy Marriage (*Ta'adud Zaujat*)

Polygamy Marriage or in terms of Fiqh is usually called *Ta'adud Az-Zaulat* (*Istri yang berbilang*) is a marriage between a man with some women. History has shown that there were many Kings or tribe chiefs had more than a wife and it was received by the society. Yet, there are many efforts taken to obstacle the practice of polygamy marriage (Muhammad, 1998: 63).

So far, the discourse about Polygamy becomes an endless debate and appears the controversy of many sides. One side states that the Polygamy marriage factually is manifestation of authority and domination of men towards women. Besides, the

Polygamy marriage enables of occurring despotically deeds and violence towards the women either physically, psychologically, and socially. Another side states that the Polygamy marriage is allowed by the primary requirement that the man must be able to reinforce justice in all sides for the wives. The controversy of the Polygamy marriage appears nation-widely when Abdullah Gymnastiar or Aa' Gym (The well-known religious figure and the chief of Pondok Pesantren Daarrut Tauhid Bandung) and Zaenal Ma'arif (The ex-vice leader of Indonesian Legislation Assembly) conducted the Polygamy marriage in the relatively mean time. At that time, many books, essays on mass media, journals and other writing reviewed issue of the Polygamy marriage. Absolutely, some writers agree with the Polygamy marriage and some writers do not agree with the Polygamy marriage.

The controversy of the Polygamy marriage also happens among *Ulama'* (The religious Islamic figures or scholars). There are three mainstreams of *Ulama'* thoughts in terms of the Polygamy marriage. First, *Ulama'* who allow the Polygamy marriage with the absolutely fair requirements. Second, *Ulama'* who allow the Polygamy marriage for the sake of adopting the widow and the orphans. Third, *Ulama'* who refuse the Polygamy marriage such as Habib Bu Ruqoiba and Muhammad Mohammad Taha (Badri, dkk. 2002: 121-140 and Nasution, 2002: 103-129).

It is based on *Ulama'* views, the Polygamy marriage is allowed. However, they have different opinions about whether the Polygamy marriage may be conducted towards all women provided that it is not more than four wives or the Polygamy marriage is only particularly intended towards the widows who have the orphans in order to help them.

The first group of the informants consists of SMT, MMN, MST, RY, and ZMF. They state that the Polygamy marriage may

be allowed so long as the husband can conduct fairly towards his wives and the husband can grant his wives economically. Furthermore, RY also adds that besides the two requirements above, the husband must get permission from his wife. MMN state that:

> *"Nikah poligami pada dasarnya itu boleh. Kaum muslimin diperbolehkan berpoligami dengan dasar Al Qur'an. Poligami itu dibatasi hanya empat perempuan saja. Sebelum ayat in turun, manusia berpoligami lebih dari empat. Ayat inilah batasan bagi orang yang berpoligami. Kalau tidak bias berlaku adil, maka satu saja cukup. Jadi, persyaratan poligami itu kita harus adil terhadap istri-istri, kalau tidak bisa satusaja."*
>
> *"(Basically, the Polygamy marriage is allowed. The Moslems may conduct the Polygamy marriage on the basis of Al Qur'an. The Polygamy marriage is only restrictive on four women. Before this verse descended, people may conduct the Polygamy marriage more than four wives. This verse is the limition of doing the Polygamy marriage. If the husband can not behave the wife fairly, so one wife is absolutely enough. So, the main requirement of the Polygamy marriage is behaving the wife fairly. If it can not be fair, one wife is more suggested).*
>
> *In line with MMN, RY states that:*
>
> *"Menurut saya, poligami kalau memang sudah memenuhi syarat-syaratnya itu boleh-boleh saja. Artinya memenuhi syarat-syaratnya itu kalau dari segi ekonomi sudah bisa, segi keadilan juga bisa, terus yang ketiga ini yang terpenting yaitu istrinya harus Ridho."*
>
> *"(In my opinion, the Polygamy marriage is allowed if the requirements have been fulfilled. It means that the requirements have been fulfilled, from the economical point of view has been fulfilled, from the fairness point of view has been fulfilled. And, then the third requirement constitutes the most important requirement namely the wife must be Ridho or permissive)*

It is based on the views of MMN and RY, the Polygamy marriage may only be allowed towards the men who have fulfilled the requirements. For the men who have not fulfilled the

requirements such as he can not behave his wife fairly, he should conduct the Monogamy marriage. Besides, it needs to know that the teaching of Polygamy does not come from Islamic teachings. It is only tradition which derives from the European tribes, the African tribes, the Asian tribes, and other tribes in Jazirah Arabiah with the model of the Polygamy marriage without any limitation. It means that a chief tribe may marry many women and without any limitation in terms of the women who may be got married. According to MMN, Islam comes to control the Polygamy marriage by proposing a clear restriction namely four women and it is only prevail for a man who can fulfill absolutely strict requirements.

The second group of the informants consists of TQM and HSN. They state that the ideal marriage is the Monogamy marriage, a marriage with only one wife. For them, the Polygamy marriage is allowed only for a social intention namely guarding and rescuing the widows and the orphans. The allowance of Polygamy is *Muqoyyad* (it is restrictive for a certain condition), not free without any limitation. It means that a man who will conduct a Polygamy marriage should fulfill some rigid requirements such as the man is be able to behave his wife fairly and he should get married with a widow who has orphans. TQM states that:

> *"Saya kira Polygami itu tidak bebas. Karena kalau melihat ayatnya itu juga Muqoyyad (Terbatas). Saya dalam hal ini banyak dipengaruhi oleh pemikiran Muhammad Syahrur bahwa Poligami itu dibolehkan dengan ada syaratnya. Syarat kualitas dan kuantitas. Syarat kualitas itu adalah suami betul-betul berusaha bisa berbuat adil. Kedua, wanita yang dipoligami harus janda dan punya anak yatim. Karena dalam Al Qur'an, Poligami itu orientasinya ke masalah social, bukan orientasi seksual. Ditegaskan dalam buku Syahrur: Liamanatul Aram Wal Itam (Membantu para janda dan anak yatim). Begitu pula yang dipraktekkan Rosul Muhammad SAW. Tetapi sebagian orang melakukan Poligami itu terkesan berorientasi seksual, dan ini bertentangan dengan Al Qur'an. Tetapi pernikahan yang ideal itu tetap Monogami."*

> *"(I think the Polygamy marriage is unimpeded. It is based on the verse, the Polygamy marriage Muqoyyad (it is restrictive for a certain condition). In this case, I am influenced by Muhammad Syahrur's thoughts that the Polygamy marriage is allowed with some strict requirement-the qualitative requirement and the quantitative requirement. The qualitative requirement is the husband should really attempt to behave the wife fairly. The quantitative requirement is the husband only may marry a widow who has orphans. It is because on Al Qur'an, the orientation of the Polygamy marriage is the social matter, not the sexual matter. It is confirmed on Syahrur's book: Liamanatuil Aram Wal Itam (Guarding and helping a widow and the orphans). So did Rosul Muhammad SAW. But some people seem to conduct the Polygamy marriage on the basis of the sexual orientation, and it is against Al Qur'an. But the ideal marriage stays the Monogamy marriage).*

The comprehension of TQM and HSN is still better than the first group of the informants who give freely opportunity the man to do the Polygamy marriage. The second group of the informants bases their religious comprehension towards the intention which is implied on the text and the background that becomes the cause of the descendent of *Al Qur'an*. It differs with the first group of the informants who comprehend the text of *Al Qur'an, An-Nisa' verse 3* literally. Therefore, the review of the Polygamy law, in the future, must consider the rightness towards the women and the reality of the Polygamy practice. It is in accordance with the law principle that the law can change in concord with the rationality-logicality (*Al-Hukmu Yadaru Ma'a Illatihi Wujudan wa 'Adaman*).

J. Contracted Marriage (*Nikah Mut'ah*)

Nikah Mut'ah or the Contracted Marriage is a marriage which is limited by a certain time because the man who marries the woman has determined time only for a day, a week, a month, a year, etc. *Nikah Mut'ah* is often called by *Nikah Muakkad* (*Nikah Sementara*/

Temporary Marriage) or *Nikah Munqothi'* (*Nikah Terputus*) (Al-Jazairi, IV: 90). Recently, the discourse and the practice of *Nikah Mut'ah* starts to increase. According to Dr. Musdah Mulia, most practices of *Nikah Mut'ah* can be found in West Java. The inclination of *Nikah Mut'ah* can be seen when there is someone who comes to a certain village, and then lives there for a certain time and gets married. Because staying for a certain time, the marriage is also usually done for a certain time. The marriage is called *Nikah Mut'ah*. According to Sri Hidayati, *Nikah Mut'ah* also happens in Jepara with the entrepreneurs of furniture who lives for a certain time in Jepara (Badri, dkk., 2002:142).

According to Tyas Retno Wulan (2005), *Nikah Mut'ah* is also practiced among *Syi'ah* community particularly in Pekalongan, Wonosobo, and Purwokerto. According to the existing data, there are three kinds of *Nikah Mut'ah*. First, *Nikah Mut'ah* as the preparation for *Nikah Da'im (*The permanent marriage). Second, *Nikah Mut'ah* is conducted because she will do a long journey for the woman in order she is not sinful when she is accompanied by a man. Third, *Nikah Mut'ah* is conducted for the reason of avoiding any sexual act outside the formal marriage (Adultery).

All *Kyai* and *Nyai* agree that whatever argumentation and reason which are proposed, *Nikah Mut'ah* is absolutely prohibited or forbidden. According to most *Kyai*, *Nikah Mut'ah* has broken the primary intention of *Syari'ah* (*Maqoshid Syari'ah*) namely the strong marriage bond (*Mitsaqon Gholidho*) and insulting the women' honor and dignity. Therefore, *Kyai* and *Nyai* state that the marriage with the way of *Mut'ah* or a temporary time is *Haram* (Prohibited, forbidden or something that the avoidance of which yields merit or *Pahala* but the performance of which is sinful or *Berdosa*). The followings are the opinions of *Kyai* and *Nyai* about the issue of *Nikah Mut'ah*:

1. HSN states that:

"*Nikah Mut'ah* menurut saya bagian dari pelecehan terhadap perempuan. Bagaimana *Ma'asyiruhunna Bil Ma'ruf* (Membangun pergaulan yang baik) bisa terjadi kalau hanya sekian bulan saja kemudian perempuan dicampakkan. Perempuan bukan sekedar pelengkap, tapi bagian dari kita (*Nikah Mut'ah*, in my opinion, is a part of abusement towards women. How *Ma'asyiruhunna Bil Ma'ruf* (Creating a good daily relationship) may be embodied if their relationship only goes on such a monthly, and then the woman is thrown away. The woman is not s complement, but the woman is a part of our life).

2. TQM states that:

"Saya berpendapat *Nikah Mut'ah* tidak boleh karena itu bertentangan dengan *Maqoshid As-Syari'ah* (Tujuan dasar *Syare'at* Islam) tentang pernikahan, tapi kalau itu *Ibahatul Jima'* (Menghindari perbuatan zina), ujung-ujungnya membolehkan *Mut'ah* (*Nikah Mut'ah*, in my opinion, may not be carried out because it is against *Maqoshid As-Syari'ah* (The basic principles of Islamic law) with respect to a marriage, but if it is *Ibahatul Jima'* (Avoiding the adultery), eventually it is allowed).

3. MMN states that:

"Menurut *Ahlus Sunnah Wal Jama'ah, Nikah Mut'ah* tidak sah. *Nikah Mut'ah* atau *Nikah Muaqqotah*, pernikahan jika di dalam *Akad,* misalnya, dikatakan "Saya menikahkan kamu selama satu minggu" itu tidak sah. Pada zaman Rosulullo SAW, pada waktu tertentu Rosulullo SAW membolehkan *Nikah Mut'ah*, kemudian di *Nasakh* (Penghapusan hukum) oleh Rosulullo SAW. Umar juga memberitahu bahwa telah terjadi pe-*naskh*-an terhadap *Nikah Mut'ah* dan itu disepakati oleh *Ulama' Ahlus Sunnah Wal Jama'ah*) (According to *Ahlus Sunnah Wal Jama'ah, Nikah Mut'ah* is illegal. *Nikah Mut'ah* or *Nikah Muaqqotah*, a marriage if on the covenant, for example, is stated "I marry you for a week", it is illegal. On the age of Rosulullo SAW, at a certain time Rosulullo SAW allowed the realization of *Nikah Mut'ah*, but then it is *Nasakh* (The cancellation of law) by

> Rosululloh SAW. Umar also notified that it had happened *Nasakh* (The cancellation of law) towards the law of *Nikah Mut'ah* and it was agreed by *Ahlus Sunnah Wal Jama'ah*.

There is only a *Kyai* namely ALF who allows the realization of *Nikah Mut'ah*. He states that for those who have opinions that *Nikah Mut'ah* is allowed to be done on the basis of *Al Qur'an* (The sacred book of the Muslims which is written in Arabic and contains the words of Allah SWT as revealed to the Prophet Muhammad SAW), *Hadis* (A collection of stories related to words and deeds of Muhammad SAW), and the mind basis, so *Nikah Mut'ah* is allowed to be conducted. However, if *Nikah Mut'ah* is done only to attain material advantages, so the law is prohibited. ALF states that:

> "*Nikah Mut'ah itu masalah pribadi. Kalau orang itu memang meyakini boleh dengan dalil Nash atau pakai akal. Tapi kalau ukurannya sudah materi, maka segalanya bisa terjadi. Kalau ada tujuan materi itu jelas dilarang agama.*"
>
> (*Nikah Mut'ah* is a private problem. If the man really feels sure about the allowance of *Nikah Mut'ah* wwhich is based on the basis of *Al Qur'an* and the mind basis**.** But if the standard is the materials, so everything can happen. The material intention is absolutely forbidden by the religion, particularly in Islam).

It seems *Nikah Mut'ah* is only a trivial inclination to be practiced in Indonesia. The reaction of major Islamic community refuses the practice of *Nikah Mut'ah*. The refusal is based on QS An-Nisa' verse 24 . QS An-Nisa' verse 24 is interpreted that the marriage has to be intended to be permanently carried out. Therefore, a marriage which is intended to be a temporary intention or it is only to look for the temporary pleasure is considered mistaken and deviates from the basic principles of Islam. Besides, there are *Hadis* of Prophet Muhammad SAW and *Fatwa* from disciples of Prophet Muhammad SAW which firmly forbid the realization of *Nikah Mut'ah*.

Besides, the marriage also causes the problematic effects towards women, particularly the fulfillment of women' right and reproductive health, the respecting of towards women' honor and dignity and also the admission towards the social position of women.

K. Early Marriage and *Ijbar* (Forced Marriage)

Nikah Dini or *Early Marriage* is a marriage which is conducted at the child age. Child is accepted-nationally defined as a person who is 0-8 years old. If they get married or are married to others at the age, so the marriage is considered as *A Child Marriage* or *Early Marriage*. Bogue (on Hanun, 1997) classified the Early marriage based on the age of female marriage into four categories. 1) Perkawinan Anak-anak (The child marriage). It is a marriage which is conducted under the age of 18. 2) Perkawinan Umur Muda (The early marriage). It is a marriage which is conducted between the age of 18-19. 3) Perkawinan Umur Dewasa (A marriage at maturity). It is a marriage which is conducted between the age of 20-21. 4) Perkawinan Terlambat (Late marriage). It is a marriage which is conducted between the age of 22 and the rest of it.

In Indonesia, Perkawinan Umur Muda (The early marriage) either for males or females is still great in amounts. In the middle of 1990s, it was estimated about 29 % of Indonesian adolescents did the marriage at the age of 10-16. The marriage at the age of 17-18 is conducted by 28 % and 37 % at the age of 19-24. And it is only about 6 % gets married at the age of 25 (Kedaulatan Rakyat: December 5, 2000). The force of marriage usually happens among the community who has legal-formalistic concept towards the religion or the community is influenced by patriarchal values. One of the patriarchal values is the shame feeling with respect to stigmas which go to force the women not to get married soon.

In terms of the early marriage, *Ulama's* opinions can be classified into two mainstreams of opinions. The first mainstream is *Ulama'* agrees that the limitation of age should be done when the person may get married or conducts a marriage. According to the first group, the marriage needs an emotional maturity so that the limitation of is absolutely crucial to measure the maturity of a person. This first group agrees with the limitation of age as it is mentioned on Constitution on Marriage No. 1 1974 and Constitution No. 7 1989 namely 19 years for the females and 21 years for the males. However, this first group affords concession towards to realize the marriage before the age if there is an extraordinary *Madhorot* (Dangerous matters). TQM, for example, states that:

> *"Kalau orang melakukan pernikahan belum matang itu punya dampak terhadap pernikahan. Undang-undang itu menurut saya sudah bagus. Kenapa perempuan dilarang menikah sebelum berumur 19 tahun. Karena kematangan itu menurut penelitian ketika perempuan berumur 19 tahun. Yang laki-laki juga begitu, kematangan biologis, psikologis, mental dan sebagainya itu relatif biasanya pasca umur 19 tahun. Akan tetapi dalam kondisi tertentu, orang bisa melakukan pernikahan sebelum umur tersebut, misalnya ini bahaya kalau sudah berdua-dua terus, daripada nanti ada masalah maka lebih baik dinikahkan"*
>
> *"If someone conducts a marriage on the immature age, it has side effects towards the marriage. The Constitution, to me, is good enough. Why a female is forbidden to get married before the age of 19, it is because according to a research, the maturity of women is on the age of 19. So are the men. The biological, psychological, and mental maturity usually relatively emerges after the age of 19. However, on a certain condition, someone can conducts a marriage before the age of 19 because of some reasons such as there is a couple who always has been in both, rather than causing a problem, it is better for them to be married.*

It is different with the first group, some communities allow the realization of the early marriage provided that they are at the level of *Rusydan* (mature). In a sense, it is not only looked up from the age side. According to the second group, the marriage matter can be

conducted either by the adolescents, the adults or the old persons. The important is they have mature and responsible attitudes. On the contrary, the marriage may not be done by anyone, however the age if she does not have mature and responsible attitudes. HSN, for example, states that:

> *"Menurut saya, pernikahan itu kebolehannya tidak dibatasi oleh usia, tapi dibatasi pada kapan seseorang itu bisa melakukan tanggung jawabnya. Meskipun dia masih dibawah umur 16 tahun misalnya, saya pikir sudah bisa melakukan tanggung jawabnya sebagai seorang istri atau sseorang suami, saya pikir itu tidak masalah. Meskipun umurnya 40 tahun tapi kalau dia tidak bisa bertanggung jawab seperti orang Safih (Orang yang sangat bodoh) sebaiknya tidak dinikahkan saja, karena dia tidak bisa melakukan tanggung jawabnya."*
>
> *"(In my opinion, the allowance of marriage is not limited by age, but it is limited by when the person can bear a responsibility. Although he is still under 16, for example, but he has been able to bear a responsibility as a wife or a husband, I think it is not a serious problem to get married. Even though he is 40 years old but he can not bear the responsibility like a Safih (A definitely foolish man), it is better for him not to be married because he can not bear his responsibility well).*

The essence f the two mainstreams is a marriage needs the mental, psychological, and social readiness in order he can bear the responsibility of household and husband-wife rights and obligation. Hence, the two mainstreams do not need to be contrasted but it is better to take the best and acceptable solution. The solution is the marriage should not be conducted by the person under the age of 19 for the females, and 21 for the males. It is for person who has the maturity of attitude, and ready to bear the responsibility. Islam affords a limitation that the allowance of marriage is when the person has reached the level of *Ba'ah* (Having capability). It means that he is at the age in which he can be afforded *Taklif* (A household burden) to hold a household either physically, mentally, and socially. On the context of Indonesia, the limitation of age can

be referred to Constitution No. 1 1974 namely the minimal age of marriage is 19 for the females and 21 for the males.

With respect to the marriage of female under the proper age, there is an interesting opinion proposed by Ibnu Syibrimah: *"Marrying a female under the proper age is illegal, for the sake of the female herself and also the family."* Ibnu Syibrimah's opinion affords a reasonable guidance. It is because the woman who will undergo the marriage is the female herself. So, a father or a grand father must give opportunity to the maiden to grow up and develop to become an adult person who can choose her way of life and can determine her marriage partner. The marriage should be conducted after each couple reaches the level of maturity, either physical-biological or mental-psychological.

In terms of *Ijbar* or marrying a daughter forcedly by *Wali Mujbir* (Father or grandfather who has right to get married a daughter) in which the daughter is still young, so *Kyai* and *Nyai* agree to not agreeing of giving allowance. The followings are the statements of *Kyai* and *Nyai* about the issue of *Ijbar* on the certain marriage:

1. HSN states that:

"Seharusnya ada dialog terlebih dahulu antara orang tua. Jadi, Ijbar itu tidak serta merta orang tua boleh menggunakan otoritasnya sebagai orang tua. Mendialogkan perkawinan itu dengan anaknya dan dia harus melihat bahwa anaknya itu setuju meskipun dengan cara diam. Dia harus melihat diamnya itu diam setuju atau tidak. Karena Nabi SAW mengatakan "Idznuha Ashomtu" (Idzinnya anak perempuan itu diamnya). Kalau anak perempuan tidak mau, Wali harus mempertimbangkan

(It should be better to have a dialog previously between the parents. Thus, Ijbar is not immediately allowing the parents to use their authority as the parents. Having a dialog of the marriage with their daughter and looking at their daughter agrees although she is only using a silent way. They must look at, her silence is agreeing or not agreeing because Prophet Muhammad SAW states "Idznuha Ashomtu"

(The permission of a daughter is her silence). If the daughter refuses, Wali must consider it).

2. TQM states that:

"*Saya juga tidak sepakat dengan Nikah Ijbar. Ijbar itu memaksa karena dilihat dari konteks sosio-historisnya, Wali Mujbir itu sebenarnya untuk kemaslahatan anak perempuan dan laki-lakinya. Kalau misalnya tidak Kafa'ah (Sepadan), maka tidak ada alasan memaksa. Saya agak keberatan mengenai Wali Mujbir dalam Madzhab Syafi'i. Kenapa muncul pemahaman itu, saya kira itu dipahami secara kontekstual. Konteks dulu Wali Mujbir, kemudian kalau di Madzhab Hanafi tidak ada karena kondisi sosio-historis zaman dulu. Kondisi sosio-historis zaman dulu antara lain: Dulu perempuan tidak keluar rumah sehingga untuk memilih calon suami cukup diberikan kepada walinya yang lebih tahu. Untuk konteks sekarang, calonnya lebih tahu daripada bapaknya anak perempuan itu. Maka itu tidak relevan*"

(I do not also agree with Nikah Ijbar. Ijbar really forces because it observed from the social-historical context, Wali Mujbir is actually assigned for the advantages of a son and a daughter. If, for example, there is no any Kafa'ah (Equality of a couple), so there is no any reason to force. I mind for a bit in terms of Wali Mujbir on the Syafi'i persuasion. Why the comprehension appears, I think it is understood contextually. The past context of Wali Mujbir, and then on the Hanafi persuasion could not be found the terms of Wali Mujbir because of the influence of social-historical condition in the past. The social-historical condition in the past such as: In the past, a woman did not leave home, so to choose a nominee of husband, it was proper to be afforded Wali who was considered know more. For the recent time, the nominee usually knows more than daughter's father. So, it is not relevant anymore).

3. MMN states that:

"*Ijbar itu haknya Wali, kalau anak masih kecil. Pernikahan dini menurut Syar'i tidak apa-apa. Tetapi karena kita berada dalam Negara Hukum, maka harus dengan ketentuan Negara. Akan tetapi, jika si perempuan itu sudah dewasa, maka ada hak Khiyar (hak*

memilih untuk melanjutkan atau membatalkan pernikahannya). Maka pihak-pihak terkait berkewajiban untuk membolehkan atas protes si perempuan itu).

"(Who has the right of Ijbar is Wali, if the woman is still child or young. The early marriage, according to Syar'i (The Islamic laws), is alright. Yet, we are in Negara Hukum (A lawful country), so it should be adjusted with the law of State. However, if the female has been grown up, so the female has the right of Khiyar (The right to choose between continuing and canceling the marriage). So, the related sides have obligations to allow on the female's protest).

It is based on the statements of *Kyai* and *Nyai* above, it seems that although in *Fiqh* the concept of *Nikah Ijbar/Nikah Paksa* (The forced marriage) exists, but by observing the advantages either it is to appreciate the woman rights or to create a happy family, so *Kyai* and *Nyai* refuse the realization of *Nikah Ijbar* in Indonesia. It means that, as stated by TQM, there are different contexts when *Fatwa* (A binding rule in terms of a religious matter) of *Nikah Ijbar* is applied for the recent contexts. Therefore, the law of *Nikah Ijbar* has not been proper to be applied in Indonesia.

L. Hidden Marriage (*Nikah Sirri*)

Nikah Sirri or usually known as Under-Handed Marriage, Hidden Marriage or Silent Marriage. It is based on the understanding of Indonesian society, *Nikah Sirri* is a marriage which is conducted to fulfill the stipulations of *Syarat* and *Rukun Pernikahan* (The requisites and the essential principles of a marriage) according to conventional *Fiqh*, but it has not been noted at the Office of Religious Matter (KUA) or the State's office which handles the problem of NTCR (*Nikah, Talaq, Cerai, Ruju'* or Marriage, Separation, Divorce, Reconciliation). HSN states that:

"Pengertian masyarakat tentang Nikah Sirri adalah Nikah diluar catatan KUA. Dalam pengertian, pernikahan yang dilakukan tanpa ditunggui oleh petugas pencatat nikah dari KUA."

> *"(The definition which is comprehended by general society about Nikah Sirri is a certain marriage which is conducted outside the documentation of the Office of Religious Matter/KUA. In a sense, it is a certain marriage which is conducted without officers' presence of the Office of Religious Matter/KUA).*

Although *Nikah Sirri* is religiously and traditionally considered legal, the marriage which conducted without knowing and controlling of the marriage officers, the marriage does not have the lawful basis and is considered illegal on the basis of the Marriage Law which is obtained in Indonesia, in concord with *Kompilasi Hukum Islam/KHI* (*the Compilation of Islamic Laws*) article 6 verse 2, which states that a marriage which is conducted outside the marriage officers does not have the lawful force. The consequence of not noting the marriage is there is no *Akte Nikah* (A documentation of marriage). *Nikah Sirri a*bsolutely has disadvantageous effects towards the wife and the women in general, either lawfully or socially. And furthermore, it definitely has negative impacts towards the status of a child who is given birth before the law.

MST states that: "I really do not agree with *Nikah Sirri*. (Saya sangat tidak setuju dengan adanya *Nikah Sirri*, karena korbannya adalah wanita dan anak. Itu hanya orang yang mencari syahwat murni. Dan dalam *Nikah Sirri* ini ada kesulitan bagi perempuan, kalau nanti dalam rumah tangganya ada masalah, misalnya mau cerai maka tidak ada hakimnya dan anaknya tidak akan berhak atas warisan)."

Looking at the case, *Kyai* and *Nyai* at *Pondok Pesantren* (Moslem boarding schools) have different opinions. The opinions are classified into two contrastive opinions. First, *Kyai* and *Nyai* who do not agree with the realization of *Nikah Sirri*. For them, *Nikah Sirri* includes the illegal category. MST states that:

> *"Saya sangat tidak setuju dengan adanya Nikah Sirri karena korbannya adalah wanita dan anak. Itu hanya orang yang mencari syahwat murni.*

Dan dalam Nikah Sirri ini ada kesulitan bagi perempuan kalau nanti dalam rumah tangganya ada masalah misalnya mau cerai, maka tidak ada hakimnya dan anaknya tidak diakui berhak mendapat warisan."

(I really do not agree with Nikah Sirri because the victims are always the woman and the child. It is only for a person who looks for a pure lust. And on the Nikah Sirri, there are great problems for the wife if she, for example, wants to divorce, so there is no any judge and her child will not be admitted to have right to attain inheritance).

Second, *Kyai* and *Nyai* who do not agree with the realization of *Nikah Sirri*. They are TQM, ZMF, SMT, and HSN. They do not agree with the realization of *Nikah Sirri*, although they state that on the basis of legal-formal-Islamic law, *Nikah Sirri* is legal, but for them, it includes illegal because of breaking down the positive law in Indonesia. Actually, the two mainstreams of opinions stress that although *Nikah Sirri* is legal, but because *Nikah Sirri* appears many negative effects, so it is suggested that *Nikah Sirri* should not be carried out. TQM states that:

"Nikah Sirri itu menurut saya illegal. Menurut terminologi orang itu nikah dibawah tangan, artinya Kyai menikahkan laki-laki dan perempuan tanpa dicatatkan di KUA. Secara agama itu sah. Tapi itu illegal karena itu banyak merugikan kaum perempuan, dan kasusnya sudah banyak ketika terjadi perceraian perempuan tidak bisa menuntut warisan, hak asuh anak dan lain sebagainya."

"(In my opinion, Nikah Sirri is illegal. Terminologically, the man is having the under-handed marriage. It means that Kyai gets to marry a man and a woman without being written at the Office of Religious Matter/KUA. If it is based on the religious basis, it is legal. But, it is actually illegal because it takes lot of disadvantages towards the women, and the case is so many when a divorce happens, the woman can not get inheritance, the right of guiding children and other rights).

The same opinion is also proposed by HSN. He states that:

"Jadi menurut saya Nikah Sirri itu tidak apa-apa. Hanya kaitannya dengan kemaslahatan perkawinan itu sendiri. Saya pikir Nikah Sirri

itu tidak perlu dilakukan. Kalaupun dilakukan ada jaminan bahwa perkawinan itu tidak membawa ke-Madhorot-an."

"(Thus, in my opinion, Nikah Sirri is alright. The relationship is only with the marriage itself. I think Nikah Sirri does not to be conducted. If it is done, there must be a guarantee that the marriage does not take Madhorot (Any danger which is caused by the marriage).

MMN also states the same opinion that even though *Nikah Sirri* is legal, but if the following day there is a problem, so the dangers will be more. He also states that:

"Nikah Sirri itu bisa dimaknai melalui akar Syar'i dan Akad Hukumi (KUA), tapi tidak ada Walimatul 'Ursy secara luas. Nikah seperti itu tidak masalah. Nikah Sirri itu ada dua makna: 1) Nikah secara Syar'i dan Akad Hukumi (melalui pencatatan nikah di KUA) tapi tidak ada Walimatul 'Ursy, 2) Nikah secara Syar'i saja tanpa dicatatkan di KUA. Jadi, nikah secara Syar'i itu sah secara agama tapi tidak secara pemerintah. Tapi hal ini bisa terkendala apabila timbul masalah, kalau ada tuntutan tentang Akte kelahiran dan lain-lain. Maka nikah secara hukum juga diharuskan demi kemaslahatan pernikahan"

"(Nikah Sirri can be meant through the roots of Syar'i and Akad Hukumi (the formal documentation of the officers of the religious matter or KUA), but there is no any Walimatul 'Ursy which is introduce to public. Such a marriage is alright. Nikah Sirri can be divided into two meanings: 1) The marriage which is conducted in the way of Syar'i and Akad Hukumi (through the formal documentation of the officers of the religious matter or KUA), but but there is no any Walimatul 'Ursy which is introduce to public. 2) The marriage which is conducted in the way of Syar'i without being written at the officers of the religious matter or KUA. Thus, such a marriage in the way of Syar'i is legal, but in the way of State's rules, it is illegal. It definitely can emerge a problem if there is a demand in terms of akte kelahiran (The Birth Note) and other problems. So, the marriage in the way of State's rules is also required for the sake of the marriage's advantages).

Therefore, by looking at the great effects of the practice of *Nikah Sirri*, so it is better if *Nikah Sirri* is not carried out. It is based

on the analysis of *Kyai* and *Nyai* above, it seems that there are a separation between the Islamic law in the sense of *Fiqh* with the Islamic law which is prevailed by the State. Although at the last conclusion, *Kyai* and *Nyai* emphasize that *Nikah Sirri* should be better to be forbidden because it takes lot of negative effects either towards women or towards children. The researcher agrees with the opinions of Imam Malik (93-179) that *Nikah Sirri* or a marriage which is made secret intentionally by the sides that are involved at the marriage is illegal. If it is learnt more deeply about the *Mafsadat* (Advantages) and the *Madhorot* (Disadvantages), *Nikah Sirri* definitely must be prohibited to be done. It is clear that *Nikah Sirri* can not realize the intentions of why a marriage is taken into law. Even, it can cause the greater *Mafsadah* (the greater advantages) as the side effects.

M. Abortion

The usage of contraception devices to postpone pregnancy does not immediately be able to guarantee the pregnancy itself. Failure of the usage of contraception devices, for example, may happen. In fact, the practice definitely often occurs. The unexpected pregnancy can suddenly happen. The unexpected pregnancy is not only because of failure of the contraception failure but also because of other factors that can disturb the reprodcuctive health of a female. In such a circumstance, the next question is can the female abort her pregnancy?

Principally, Islam establishes all the kinds of damage, injuries, and further killing of the human being *Haram* (forbidden). It is like proposed on the holy book, *Al Qur'an*, and also the statement of Prophet Muhammad SAW. It is stated on *Al Qur'an* that: *"Don't drop you off on demise (Jangan kamu jatuhkan dirimu dalam kebinasaan)."* On a certain *Hadis*, Prophet Muhammad SAW states that: "*La Dhoror Wa La Dhiror* (there is no any right for anyone to endanger

himself and other people)." It can only be conducted on the basis of Islamic right law and for the sake of the human justice.

However, there are many cases where the human being is faced towards the choices that are not expected. There are many cases when a pregnant woman is dealt with a dangerous disease such as the chronic heart, the lung cancer or other chronic cancers, which can take her to die if the pregnancy is still gone on. The woman can also face a absolutely bitter social problem such as the heavy stress because of raping or incest. On such a case, she definitely faces a dilemmatic choice. Aborting of pregnancy can mean killing a live soul of human. But in other side, letting the soul stay alive on mother's womb to be given birth can cause the mother's death and take extremely heavy psychological trauma. The reality on Indonesian society shows that the amount of mother death of this country because of giving birth is relatively high. More than 400 people of each 100. 000 people died because of giving birth.

The abortion constitutes a serious problem in Indonesia. There are about 2,3 million of the abortion cases each year. Even, the possibility of the real data can be more because many abortion actors choose the illegal and unsafe ways. Although Indonesia includes a country which has very strict rules of the abortion, Indonesia so far does not have a centre of the abortion service which is appropriate to do the abortion process and in concord with the Constitution No. 23/1992 about Health. According to dr. Azrul Azwar, the chief of Perkumpulan Keluarga Berencana Indonesia (PKBI) or Association of the Indonesian Family Planning (www.komnasham.or.id/publikasi/FAKTAHAM), each year it is estimated about 2,3 milion people in Indonesia doing the abortion practice. The demand of abortion outside the health reasons is commonly called *Abortus Provokatus Criminalis* in which the stipulation is managed on Kitab Undang-Undang Hukum Pidana/

KUHP (the Criminal Code). The abortion can be conducted either medically or non-medically. For instance, the abortion is conducted medically through the Family Planning clinic and official hospitals, in which actually it may only be conducted towards *Abortus Provokatus Criminalis* (The abortion which is conducted because of health reasons). While, the non-medically abortion can be done by drinking *Jamu Ramuan Tradisional* (The traditional medical herbs) or going to *Dukun Beranak* (A midwife).

The risk that will be undergone by the woman doing the abortion is the psychological and physical trauma. Yet, the woman who does non-medically abortion generally has the higher risk. It is because the midwife is considered not having proper capability and knowledge in terms of the pregnancy abortion with regard to the views of modern medication; the usage of unsterile devices; the occurance of the torn womb wall because the devices enter to it causing the occurance of small hole or perforation (*Perforasi*) so that it may happen the accumulation of blood at the stomach cavity. It is sensible of causing the death of mother.

Perkumpulan Keluarga Berencana Indonesia (PKBI) or Association of the Indonesian Family Planning and Female Health Foundation (Yayasan Kesehatan Indonesia or YKP) collect data which are gathered from many hospitals in Yogyakarta. They conclude that it averagely happens about 100 cases of the pregnancy abortion with the age of actors about 15-35 years old. The amount of abortion cases is only based on the data attained from the hospitals and it does not cover the abortion cases of which are conducted by the midwife and the unidentified medical officers. The latest data as stated by Budi Wahyuni (SKH Kedaulatan Rakyat, January 3, 2005) explains that the clients of PKBI who follow counseling and having interest to do the pregnancy cessation at PKBI in 2003-2004 are about 7.000. From the amounts, 50 % of the clients can be handled well namely about 300 clients in a month.

It is based on the lawful aspects in Indonesia, *Abortus Provokatus Criminalis* is managed on article 346 KUHP:

> *"A woman who intentionally aborts her pregnancy and kills her pregnancy or has other people abort their pregnancy is threatened by Jail Punishment in which the longest time is 4 years".*

On Constitution No. 23/1992 about Health on article 15 verse (1) is stated that:

> *"On emergent situation as an effort of rescuing a pregnant mother and her embryo, it can be done a certain medical action."*

On Constitution No. 23/1992 about Health on article 15 verse (2) is stated that:

> *"A certain medical action as stated on verse (1) can only be conducted on an emergent condition."*

The abortion issue also becomes a debate among *Ulama'* at *Pondok Pesantren*. TQM, RY and HSN propose their opinions that the abortion is basically *Haram* (Forbidden, prohibited or something that the avoidance of which yields merit or *Pahala* but the performance of which is sinful or *Berdosa*), but it is allowed because of a certain case such as the pregnancy of a woman because of being raped and the reason of health when the embryo is still under the age of 120 days. TQM states that:

> *"Prinsipnya tidak boleh, kecuali hamil akibat perkosaan dan itupun ada batas waktunya. Misalnya, kalau ada perempuan diperkosa akan aborsi, maka secepatnya jangan sampai menunggu 4 bulan karena itu menjadi tidak efektif, begitu diperkosa harus segera diperiksakan ke dokter supaya bisa dicegah kehamilannya. Dan memang tidak membahayakan dibawah itu (4 bulan). Namun demikian tetap perlu berkonsultasi dengan ahlinya karena kondisi kehamilan dan kesehatan orang kan berbeda-beda"*
>
> *"(Principally, the abortion is not allowed, except a pregnancy caused by a raping and it must be under a certain time. For example, there is a woman who is raped and will conduct an abortion, so as soon as possible she does not wait after 4 month because it becomes ineffective.*

The time she is raped, she immediately goes to doctor to check in order the pregnancy can be prevented. And the age (4 months) does not really take any danger. Yet, it stays to consult with the pregnant experts because the condition of pregnancy and health of anyone must be different).

In line with TQM, HSN firmly proposes his opinion by stating that:

"Seperti yang telah dibahas di Muktamar NU, aborsi pada tingkat tertentu itu boleh. Dengan alasan tertentu, yang jelas tidak dengan alasan takut tidak bisa memberi makan. Dengan alasan kesehatan, sementara janin belum diberi Ruh"

"(As discussed at the great Congress of Association of Moslem Scholars Nahdhotul 'Ulama' (Nahdhotul 'Ulama', the biggest religious-social organization in Indonesia), the abortion on a certain extend is allowed. It based on a certain reason, the clear one is not the fear of uncapability of feeding. It based on a particular reason, when the embryo has not been given any soul).

However, according to MMN, MST, AST and MHJ, the abortion is absolutely *Haram* except there is *Dhoror*. *Dhoror* is defined as a certain danger that can cause death. MMN states that:

"Aborsi hukumnya Haram. Itu sama saja dengan membunuh anak, kecuali ada Dhoror terhadap istri. Hal ini sesuai dengan kaidah Fiqhiyyah: "Kalau ada dua bahaya yang saling tarik menarik, maka kita harus mencari atau memilih yang paling ringan." Misalnya seorang istri mau melahirkan, menurut perhitungan dokter kalau istri tersebut melahirkan bisa meninggal keduanya (anak dan ibu) atau salah satunya, bisa anak bisa ibu, tentu yang dipilih adalah ibunya yang hidup. Dalam hal ini melakukan Dhoror yang paling ringan)."

"(The law of abortion is Haram (Prohibited, forbidden or something that the avoidance of which yields merit or Pahala, but the performance of which is sinful or Berdosa). It is the same as killing a child, except there is Dhoror (A certain danger) towards the wife. It is in accordance with the principle of Fiqhiyyah: "If there are two dangers which draw each other, so we have to look for or choose the easy one." For

> *example, there is a wife who wants to give birth, according the doctor's calculation, if the wife gives birth can make both of them die (the child and the mother) or one of them, it can be the mother, it can be the child, definitely the mother should be chosen to be alive. In this case, it is doing Dhoror in the extent of easiest Dhoror).*

From the explanation above, it is clear that many *Kyai* and *Nyai Pondok Pesantren* (Moslem boarding schools) prefer choosing of a pro-life alternative to choosing of a pro-death alternative. The religious comprehension of *Pondok Pesantren* states that because of any reasons, the human being is not justified to end the embryo's life. The embryo can be ended if there is a certain *Dhoror* (A certain danger that can cause death) and also clear and great *Mafsadah* (Damage, disadvantages) scientifically. It is in accordance with the Islamic law: "*Idza Ta'arodho Mafsadatani Ru'iya A'dhomuhuma Birtikani Akhoffihima* (If there is opposition between two dangers or damages, so it must be guarded the greater consequence by choosing to carry out the smaller one)." It means that if there is opposition between mother's safety and embryo's safety, so the one which is chosen is definitely rescuing the mother.

CHAPTER

V

Closing Remarks

It is based on the whole elaboration that is delivered in the above chapters of this research report, then it can be concluded that *Fatwa* of *Kyai* and *Nyai* at *Pondok Pesantren* represent one of the referential laws that legitimate in the middle of community especially in Javanese society. In this case, *Kyai* and *Nyai* play a very strategic position as the Religious Text Interpreter, the cultural broker or the agent of social changes in the middle of society. So, it is definitely important to make *Kyai* and *Nyai* as the agent for disseminating and socializing the discourse of the sexuality and the reproductive health.

It is based on the library research and the data of curriculums within *Pondok Pesantren*, it is found that discourse of the sexuality and the reproductive health was analyzed in *Kitab Kuning* (The yellow books) which relate to *Fiqh* (Islamic Jurisprudence or laws), *Qawa'idul Fiqh* and also Philosophy of Islamic law, especially in the chapter *Rubu'ul Munakahah* (a quarter from the chapter deal with the marriage issue). The discourse about the sexuality also exists on a smallest yellow book like *Kasyifatussyaja'a.* The discourse

about the sexuality also exists on the biggest yellow book which is beyond *Madzhab* (Schools of Islamic laws) such as *Al-Fiqh Al-Islamy Wa Adillatuhu* and also *Madhahib Arba'ah*. Whereas the yellow books which are concerned to the specific discussion of the issues of sexuality and the reproductive health completely can be found on *Qurrotul Uyun* written by At-Tihamy. On the yellow books, the discourse of the sexuality and the reproductive health is dominated by the male-centered interpretation which positions the women as the object and sub-ordinate partner of sexuality. One *Fatwa Ulama' Pondok Pesantren* that supporst it is fatwa which states that if the women refuse his husband for having the sexual relationship, so the angels would curse the women until morning. The statement definitely legalizes the husband to bit the wife if the wife does not obey towards the husband. The obligation of *Khitan Perempuan* (The woman circumcision) and many other issues are discriminated more based *Fatwa Ulama' Pondok Pesantren*. This models of discourse also dominate and easy to find in the majority of socio-religious organization such as *Nahdhotul Ulama'* and also on *Bahstul Masa'il* (The process of discussing problem within society). *Bahstul Masa'il* was conducted at many traditional *Pondok Pesantren* which affiliate to *Nahdhotul Ulama'* until the decade of 1990s. In the beginning of 1990s, *Fiqih Pondok Pesantren* was engaged with the discourse of contextualizing *Fiqih* and also more transformative towards the social changes. So, publishing discourse about *Fiqh*, the sexuality and the reproductive health was developed, started from the contemplative model, the unhistorical perspective, the dogmatic point of view, the formal orientation to which usually called contextual, transformative orientation, and more concerns to the dynamics in terms of the problem of the sexuality and the reproductive health.

The perspective of *Kyai* and *Nyai* about the sexuality and the reproductive health, in some cases, show the progress in discussing

the issues by creating the equality between men and women in the problem of sexuality, such as in the right of feeling enjoy with the sexual relationship, a marriage that is done in illegal way if it is dealt with the State's laws, the contracted marriage and the right of planning childbirth (*Keluarga Berencana*). This phenomena show that there is a shifting discourse from *Kyai* and *Nyai Pondok Pesantren* which relates to the issue of the sexuality and the reproductive health which come out from the basic standard of the referential literatures on *Pondok Pesantren*.

With regard to the others issues, such as the issue of abortion, polygamy, the early marriage, the woman circumcision and the right to get the right information about the sexuality for teenagers, *Kyai* and *Nyai* are classified into two big groups. The first group consists of some *Kyai* and *Nyai* who still hold a conservative-textual point of view. The conservative-textual point of view means that their point of view is based on the literal interpretation on the standard referencitial books at *Pondok Pesantren*. The second group consists of some *Kyai* and *Nyai* who dare to contextualize and change the laws in which it is based on the intra-doctrinal reform. Some *Kyai* and *Nyai* who dare to think beyond the basic standard of referential literatures on *Pondok Pesantren*. They are engaged with the gender discourses, the reproductive health and other contemporary issues which they find from the intensive training, discussion, reading books, workshops, and they also receive the empirical casual data, so they can reformulate the laws or *Fatwa,* it is not from it textual basis but it comes from the empirical cases of the law. It is in accordance with the principle *Al-Hukmu Yaduru Ma'a Illatihi Wujudan Wa 'Adaman* (The law depends on the ratio, exist or not). They hold perspectives that the core of Islamic laws and also the highest aims of Islamic laws are *Li Tahqiq Masholih Al-Ibad* (The realization of good relation for the public). For that reason, *Kyai* and *Nyai* who know the empirical cases or engage

the problem, they would be very sensitive with the problem relating to the issues of the sexuality and the reproductive health by analyzing from the point of view of realization of good relation for the public, for human kind without differing races, sexes or social stratifications among the human.

It is based on the above elaboration, it can be stated that the problem of the sexuality and the reproductive health is still a taboo matter, intricate, controversial and also interesting to be analyzed in the history of human kind. There are three principal recommendations. First, the significance of socialization and dissemination towards *Kyai* and *Nyai* about the concepts and empirical cases which deal with the sexuality and the reproductive health. By knowing the new concept and also latest empirical data about the sexual health and sexual rights, so *Kyai* and *Nyai* would be more sensitive with the problem of the sexuality and the reproductive health. Second, the participation of *Kyai* and *Nyai* in the process of inviting people to be aware with the issue of sexuality and the reproductive health is definitely urgent. *Kyai* and *Nyai* have an important role as an elite member of society as the religious authority. *Kyai* and *Nyai* become the references and the source to ask about the problem faced by the community. *Kyai* and *Nyai* also become an agent of social change. Third, there is significance to discover a new method in developing new laws which combine between the method of *Istidlal* (*Istidlal* means deductive methods) with the method of *Istiqro'* (*Istidlal* means inductive methods which is based on the factual finding from the field) or with the term *Scientific Cum Doctrinal*.

By using the latest methodology, there is the dialectical process between the religious text and the social fact. The latest methodology will be ended with the law which cares to the sense of humanity, contextual and more sensitive toward the social problem

including the problem of the sexual health and sexual rights. If there is no contextualizing, there will appear a gap between textual laws and empirical cases in the middle of the community. The text of religious law is still "*In the Tower*" and does not break down the empirical cases in the middle of the society. Because of the explanation above, the texts of law should be engaged or adjusted with the empirical cases existing in the middle of community to manage the life of human nature for the better life of human being.

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THE AUTHOR BIOGRAPHY

Muhammad Ikhsanudin, usually called Kang Ikhsan, was born in 1977 in Magelang. Kang Ikhsan is the son of Mr. H. Yahmad and Mrs. Hj. Mujiatun. His education began at his home, studying the Qur'an, *fasholatan*, theology and the basic Islamic hurisprudence with his father, then continuing to study at the Raudhotut Thullab Islamic Boarding School in Windusari and the Al-Munawwir Islamic Boarding School Krapyak Yogyakarta. Kang Ikhsan also studied at MI Miftahut Tholibin Bandarsedayu, MTsN Windusari, MAPK MAN 1 Surakarta. In 1995, Kang Ikhsan moved to Yogyakarta to study at IAIN (UIN) Sunan Kalijaga. He took the Study Program of Tafsir and Hadith for his undergraduate degree and his Masters in Islamic Law.

After graduating with a bachelor's degree, Kang Ikhsan has started to be active as a teacher at the Al-Munawwir Islamic Boarding School and the Ali Maksum Foundation, including Madrasah Salafiyyah III, Madrasah Salafiyyah V, SMK Al-Munawwir, MA Ali Maksum, Tahfidz Complex, Gedung Putih Complex, Hindun-Beta Complex and Pesantren Al-Muhsin. After completing his master's degree, Kang Ikhsan then started to be active as a lecturer at the IIQ An-Nur Yogyakarta. In addition, Kang Ikhsan is also a guest lecturer at several campuses in Yogyakarta, Solo Raya and Magelang. Kang Ikhsan is also active in research program. He has conducted research with the Ministry of Religion's Higher Education, LP3ES Jakarta, PSKK UGM and others. The

research awards that have been received are the Masri Singarimbun Research Award UGM Yogyakarta and the South East Asean Consortium at Mahidol University Thailand.

Kang Ikhsan has also been active as preacher in the community since he was a student and joined as a preacher of Kodama Yogyakarta Foundation. Kang Ikhsan is active in preaching in the community, campus mosques, government offices and companies. Currently, Kang Ikhsan and his wife founded the Ngaji "Anwarul Masalik" at his house, founding the Interactive preaching "Seneng Takon" with his friends and also actively preached on Radio and TV.

Currently, Kang Ikhsan lives happily with his beloved wife, Hj. Milhatun Nikmah, S.Pd. and his two daughters Haura Lana Hilma Majeeda and Rifda Qonita. If you want to contact Kang Ihsan, you can contact via email: ikhsanudiniiq@gmail.com.

PENGURUS WILAYAH

NAHDLATUL ULAMA

DAERAH ISTIMEWA YOGYAKARTA

المَعْهَدالإسلَامِي المُنَوِّر كَرَابْيَاكْ جُوغْجَاكَرْتَا

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ISLAM, SEXUAL RIGHT, AND REPRODUCTIVE HEALTH

THE PERSPECTIVE OF JAVANESE ULAMA'

This book started from socio-actual about the problem of sexuality which still become a controversial issue and recognized as taboo to be spoken in the Moslem public discourse, especially in Pesantren. The debate about sexual health and right still become controversy both in national or international forum, especially from the perspective of Kyai-Nyai Pesantren, because they are very ihtiyath (careful) as religious leader, cultural broker and become references of moslem community in many problems.

The perspective of Kyai-Nyai about the sexual right and reproductive health, in some issue there is significance progress that some of Kyai-Nyai views equal position between men and women related with the discourse of sexuality, such a right for enjoying sexual, refusing sex for wife, sexual violence, contractual marriage and also family planning. But in the other sides, some of Kyai-Nyai still conservative and textual minded, and there is who dare to contextualize and change the law based on intra-doctriner-reform. The issues where they have different opinion, like abortion, early marriage, circumcision, polygamy and the right for an information about sexuality. Some Kyai-and Nyai who dare to have understanding beyond textual basis they are engage with the discourse of gender, health reproduction and other contemporary issue from a training, seminar, colloquium and they received an empirical data, so they can formulate law not only from the textual basis but also seeing empirical fact behind the phenomena. There for, They are very sensitive with the problem relating to the issues of the sexual right and the reproductive health.

BINTANG SEMESTA MEDIA
Jl. Maredan No. F01, Sendangtirto, Berbah, Sleman, Daerah Istimewa Yogyakarta 55573
Telp. (0274)2254549. Hp. 085865342317
Email: redaksibintangpustaka@gmail.com
Website: bintangpustaka.com

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